

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
2010 Quadrennial Regulatory Review – Review of)
the Commission’s Broadcast Ownership Rules and) MB Docket No. 09-182
Other Rules Adopted Pursuant to Section 202 of the)
Telecommunications Act of 1996)

**COMMENTS OF TRIBUNE COMPANY, DEBTOR-IN-POSSESSION
ON NOTICE OF INQUIRY**

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July 12, 2010

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SUMMARY

For thirty-five years, based solely on the supposition that separate ownership of media outlets always will enhance diversity, the newspaper/broadcast cross-ownership rule (the “NBCO Rule”) has prohibited the common ownership of a daily newspaper and a broadcast station in the same market. The NBCO Rule has too long prevented the public in the vast majority of markets from receiving access to the high quality news and public affairs programming that has been the hallmark of companies, like Tribune Company, Debtor-in-Possession (“Tribune”), which in a few markets have been permitted to own and operate newspaper/broadcast combinations.

As in each of the four previous biennial or quadrennial proceedings examining the ownership rules, Tribune’s comments again demonstrate the compelling need for prompt repeal of the NBCO Rule. Tribune will show that the Commission was correct to repeal the flat ban on common ownership of newspapers and broadcast stations in a single market in the 2003 Order; and that its retention in the 2008 Order (albeit with modestly relaxed waiver standards), was neither supported by the record, nor currently sustainable in view of the current media landscape.

In these comments, Tribune will show that radical changes in the media industry since 1975, both in technology advances and consumer behaviors and preferences, has rendered the NBCO Rule completely unnecessary and unjustified. The development and growth of the Internet and wireless technologies has fundamentally altered the media landscape by making a world of content sources readily available and accessible through new distribution platforms. These developments have brought countless competitive diverse sources into every market, and have paved the way for new types of communication and interaction -- such as blogging and

using social media websites -- which continue to evolve.

At the same time, these changes have imperiled the business model under which newspapers and broadcast stations operate. Since the FCC last considered repeal of the NBCO Rule, “traditional media” industries have experienced severe financial difficulties due to both the general economic downturn and the competitive pressures posed by increased competition made available by new distribution platforms and technologies, and new media entrants that disseminate content through such platforms and technologies. Repeal of the NBCO Rule is needed to allow struggling properties to take advantage of cross-ownership synergies.

Tribune’s comments will briefly review the Commission’s previous proceedings to examine its ownership rules, beginning with calls for reform of the NBCO Rule (specifically) in 1996, the initiation of a proceeding to examine the NBCO Rule in 1997, the initiation of statutorily mandate biennial (later quadrennial) reviews under Section 202(h), and the 2003 and 2008 Orders and subsequent court challenges.

Tribune also re-examines the five markets in which it either owns or has an attributable interest in newspaper-broadcast combinations (New York, Los Angeles, Chicago, Miami and Hartford), demonstrating in general, that traditional media markets continue to grow and afford consumers and advertisers an abundance of media choices. More specifically, this showing demonstrates that Tribune’ common ownership of newspapers and broadcast properties has not inhibited competition, reduced diversity or compromised localism in any market where it holds such interests.

In the exceedingly competitive and rapidly evolving media industry, newspapers and broadcast stations simply no longer have the reach or the influence to harm competition, diversity or localism in a market. In fact, the record contains abundant evidence to the contrary,

not the least of which is the FCC's 2003 conclusion that newspaper-broadcast combinations serve the public interest by providing more and higher quality news and public affairs programming, without adversely affecting competition or diversity. The evidence supporting that conclusion is more compelling today than it was in 2003 and render the NBCO Rule obsolete.

Further, having found twice before that a complete ban is unnecessary, the Commission would be acting arbitrarily and capriciously to retain the NBCO Rule at this juncture. The APA requires the Commission to take into account the vast changes in the media marketplace that have occurred since 1975. Those changes have only intensified since the Commission last acted to find a ban unnecessary. Congress and the Commission have recognized these fundamental changes in numerous instances. Any Commission failure to recognize them as well would fall short of reasoned decision making. These vast changes render the NBCO Rule obsolete.

Finally, retention of the NBCO Rule would be unconstitutional, violative of both the First and Fifth Amendments. The NBCO Rule is content-based and cannot survive heightened scrutiny under the First Amendment. As a separate matter, the rational basis standard of review under which the NBCO Rule survived court scrutiny in 1975, even if once justifiable based on spectrum scarcity, no longer applies now that the scarcity doctrine has been rendered invalid by technological changes. The NBCO Rule also unconstitutionally singles out newspapers among other non-broadcast media, in violation of the Fifth Amendment. Even if the NBCO Rule was once constitutional, factual developments have rendered the NBCO Rule unconstitutional, just as they have rendered it obsolete.

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I. INTRODUCTION.

For thirty-five years, based solely on the supposition that separate ownership of media outlets always will enhance diversity, the newspaper/broadcast cross-ownership rule (the “NBCO Rule”)¹ has prohibited the common ownership of a daily newspaper and a broadcast station in the same market. The NBCO Rule has too long prevented the public in the vast majority of markets from receiving access to the high quality news and public affairs programming that has been the hallmark of companies, like Tribune Company, Debtor-in-Possession (“Tribune”), which in a few markets have been permitted to own and operate newspaper/broadcast combinations.

This Notice of Inquiry (“NOI”)² seeks comment as part of the Commission’s fifth review of its ownership rules and promises to be the most far-reaching review yet; one in which the Commission will take a “fresh look” at the current ownership rules in light of “[d]ramatic

¹ 47 C.F.R. § 73.3555(d).

² 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry, MB Docket No. 09-182 (rel. May 25, 2010) (the “NOI”).

changes in the marketplace.”³ The Commission states it will re-evaluate everything related to its ownership rules, from basic definitional values of competition, localism and diversity; the state of the current media marketplace and the impact of consolidation allowed under current FCC rules; the availability and use of new, alternative sources and distribution channels driven by technological developments; to the business models used by “traditional media.”⁴

Acknowledging the “profound marketplace, economic, and industry changes in recent years” the Commission launched this inquiry “with no preconceived notions about the framework that will result from this review or what rules we will adopt.”⁵ As it acknowledges, this review, like the others that have preceded it, is compelled by Section 202(h) of the Communications Act of 1996.⁶ The statute establishes a very explicit test for reform: the Commission must determine whether its media ownership rules “are necessary in the public interest as the result of competition” and “repeal or modify” any that no longer serve that purpose.

As Tribune has done in each of the previous biennial or quadrennial reviews,⁷ it hereby submits its comments in response to the NOI. These comments are informed by more than 60 years of experience operating newspapers and broadcast stations, some of which are in the same

³ NOI at ¶ 3.

⁴ *Id.*

⁵ *Id.*

⁶ *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h); *see also* 47 U.S.C. § 161. The reviews were first required to be conducted every two years, but in 2004 Congress amended Section 202(h) to require reviews on a quadrennial basis. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99 (2004).

⁷ *See* Further Comments of Tribune, MB Docket No. 06-121, filed December 11, 2007; Reply Comments of Tribune, MB Docket No. 06-121, filed November 1, 2007; Further Comments of Tribune, MB Docket No. 06-121, filed October 22, 2007; Reply Comments of Tribune, MB Docket No. 06-121, filed January 16, 2007; Comments of Tribune, MB Docket No. 06-121, filed October 23, 2006; Reply Comments of Tribune, MB Docket No. 02-277, filed February 4, 2003; Comments of Tribune, MB Docket No. 02-277, filed January 2, 2003; Reply Comments of Tribune, MM Docket No. 01-235, filed February 15, 2002; Comments of Tribune, MM Docket No. 01-235, filed December 3, 2001; Reply Comments of Tribune, MM Docket No. 98-35, filed August 21, 1998; Comments of Tribune, MM Docket No. 98-35, filed July 21, 1998.

markets,⁸ during past periods of economic prosperity and hardship (such as the current economic recession), and during periods of technological innovation and change. Through all, Tribune has made the interests and needs of the communities it serves – its readers, viewers, and listeners – the centerpiece of its business decisions. This focus has ensured delivery of content responsive to the consumer, thereby ensuring that its advertisers will reach the largest audiences.

Maximizing advertising revenue is essential because high quality local news and information, like Tribune’s properties produce on a daily basis, is very expensive. Advertising revenue supplements subscription and single issue sales revenue in the case of newspapers and wholly supports the operations of free over-the-air radio and television broadcasting. Without content responsive to audience needs, Tribune’s properties would not attract the advertising revenues necessary for their survival.

This business model now faces significant challenges.⁹ The need for meaningful regulatory relief is long overdue, particularly in the case of the NBCO Rule. The recent financial adversities of newspapers and broadcast stations have made the need for its repeal immediate. The conjecture that the NBCO Rule was needed to enhance diversity has never proven true. In today’s very diverse and competitive media world, the NBCO Rule has clearly outlived any

⁸ These markets include Los Angeles, where Tribune has commonly owned KTLA and the *Los Angeles Times* since 2000; Chicago, where Tribune has commonly owned WGN-TV, the *Chicago Tribune*, and WGN(AM) prior to adoption of the NBCO Rule in 1975; Miami, where Tribune has owned WSFL-TV (formerly WBZL) and the Ft. Lauderdale-based *Sun-Sentinel* since 1996; and Hartford, where Tribune has owned the *Hartford Courant* and WTIC-TV since 2000 and WCCT-TV (formerly WTXN) since 2001. In New York City, Tribune owned WPIX and *Newsday* from 2000 to 2008, but now holds only an approximate 3% indirect equity interest (with no operational control) in the parent company of *Newsday*’s publisher.

⁹ The market power of “traditional media” entities continues to decline in the face of transformative changes caused by the emergence of new technologies. As the FCC acknowledges in the NOI, “increased penetration of the Internet, and the availability of alternative sources of news, information, and entertainment online have presented the broadcast television, radio, and newspaper industries with increased competition for audiences, as well as advertising dollars, the primary sources of revenue for these industries.” NOI at ¶ 5. In addition, the NOI recognizes that “[w]hen advertising revenues decline, as they have over the past several years as a result of both structural and cyclical economic factors, these [traditional media] see immediate declines in profits.” NOI at ¶ 7.

utility it may ever have had. Indeed, it now causes affirmative harm by stifling the synergies that can be attained through cross-ownership and are needed to help newspapers and broadcast stations survive and prosper. Repeal is long, long overdue.

II. IN THE PAST FIFTEEN YEARS, THE COMMISSION HAS COMPILED EXTENSIVE RECORD EVIDENCE SUPPORTING REPEAL OF THE NBCO RULE.

For almost fifteen years, the FCC has reviewed the NBCO Rule in a number of decisions, most frequently under Section 202(h)'s mandate that the Commission periodically evaluate market conditions and determine whether any of its ownership restrictions remain "necessary in the public interest as the result of competition." These previous reviews have been halting and fitful, at best, but twice have held that a complete ban on newspaper/broadcast cross-ownership is not necessary in the public interest.¹⁰ In acting on the current NOI, the Commissioners should reach the same conclusion. The NBCO Rule today fails to advance any relevant public policy rationale; instead, its retention harms the public interest.

A. Commission Consideration of the NBCO Rule in 1996.

In 1996, a majority of the FCC agreed that reconsideration of the NBCO Rule was already overdue. Then-Chairman Hundt emphasized his concern that "there is reason to believe that . . . the newspaper/broadcast cross-ownership rule[] is right now impairing the future prospects of an important national source of education and information: the newspaper industry."¹¹ That same year, the agency issued a Notice of Inquiry regarding potential relaxation of its waiver policy for newspaper/radio combinations.¹²

¹⁰ In both instances, the FCC acknowledged the benefits cross-ownership can produce, and, in the second decision, the Commission noted that relief was necessary to reverse negative financial trends in the newspaper and broadcast industries.

¹¹ *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5906 (1996).

¹² *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13,003 (1996).

B. 1998 and 2000 Biennial Reviews.

In 1997, the Newspaper Association of America (“NAA”) filed a petition for rulemaking seeking repeal of the NBCO Rule.¹³ The FCC did not act on that petition. Instead, as required under Section 202(h), the Commission in 1998 undertook its first Biennial Review of its media ownership rules, which it completed two years later with the issuance of its 1998 Biennial Report.¹⁴ Although the agency took no action on the NBCO Rule in the 1998 Biennial Report, it concluded that the NBCO Rule needed to be modified and promised to initiate a rulemaking proceeding to amend it.¹⁵ The Commission did not, however, open such a rulemaking. Instead, the agency launched its 2000 Biennial Review, releasing a report in 2001 in which it committed yet again to “issue a notice of proposed rulemaking seeking comment on whether [the FCC] need[ed] to modify the daily newspaper/ broadcast cross-ownership rule in order to address contemporary market conditions.”¹⁶

C. 2002 Biennial Review.

In September 2001, the Commission finally issued a Notice of Proposed Rulemaking on possible elimination or relaxation of the NBCO Rule.¹⁷ After receiving extensive comments, the FCC appeared poised to fulfill its longstanding promise to modify or eliminate the NBCO Rule.

¹³ NAA Petition for Rulemaking, Amendment of Section 73.3555 of the Commission’s Rules to Eliminate Restrictions on Newspaper/Broadcast Cross-Ownership (filed Apr. 28, 1997). Tribune was then and currently remains a member of NAA.

¹⁴ *1998 Biennial Regulatory Review*, Biennial Review Report, 15 FCC Rcd 11,058 (2000).

¹⁵ *Id.* at 11,102 (¶ 83) (“[W]e believe that there may be certain circumstances in which the rule may not be necessary to achieve the rule’s public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly.”).

¹⁶ *2000 Biennial Regulatory Review*, Report, 16 FCC Rcd 1207, 1218 (¶ 32) (2001).

¹⁷ *Cross-Ownership of Broadcast Stations and Newspapers*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17,283 (2001) (“Newspaper/Broadcast NPRM”).

Instead, in mid-2002 the agency consolidated that record into a new omnibus multiple ownership proceeding tied to the 2002 Biennial Review (the “2002 Omnibus Proceeding”).¹⁸

The FCC’s review of its media ownership rules in the 2002 Omnibus Proceeding was “the most extensive” the FCC had conducted under the biennial review process.¹⁹ The agency took further public comment, commissioned a dozen quantitative studies, and held numerous field hearings. After exhaustive inquiry, the Commission concluded in its 2003 Order that the NBCO Rule was no longer in the public interest: it was unnecessary to ensure competition or viewpoint diversity, and it affirmatively harmed localism.²⁰

With respect to competition, the FCC determined the NBCO Rule was unnecessary because most advertisers do not view newspapers and broadcast stations as close substitutes.²¹ No matter whether the advertising was national or local in nature, the FCC said that these two products – newspaper advertising and broadcast advertising – were imperfect substitutes.²² The FCC could not have been clearer in its fundamental determination that “[a] newspaper-broadcast combination therefore . . . cannot adversely affect competition in any product market.”²³

With respect to localism, the FCC cited “overwhelming evidence that [newspaper/broadcast] combinations can promote the public interest by producing more and better overall local news coverage”²⁴ and recognized that “television stations that are co-owned

¹⁸ 2002 Biennial Regulatory Review, Notice of Proposed Rulemaking, 17 FCC Rcd 18,503 (2002).

¹⁹ 2002 Biennial Regulatory Review, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, ¶ 1 (2003) (“2003 Order”), *aff’d in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005).

²⁰ *Id.* at 13,747, 13,767 (¶¶ 327, 368-69).

²¹ 2003 Order, 18 FCC Rcd at 13749-52.

²² *Id.* at 13751.

²³ *Id.* at 13749.

²⁴ 2003 Order, 18 FCC Rcd at 13,759.

with daily newspapers tend to produce more, and arguably better, local news and public affairs programming than stations that have no newspaper affiliation.”²⁵ Based on the extensive record before it, the agency determined that “the current rule is not necessary to promote our localism goal, and . . . in fact, is likely to hinder its attainment.”²⁶

The FCC also found that the NBCO Rule was not necessary to protect “viewpoint diversity,” which it defined as the *availability* of media content reflecting a variety of perspectives.”²⁷ The Commission determined that “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to . . . diverse viewpoints.”²⁸ It also found that “relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.”²⁹ In reviewing comments filed in the proceeding, the FCC recognized the speculative nature of its diversity analysis: “[E]vidence shows that the link between common ownership of newspapers and broadcast outlets and common viewpoint is tenuous, ill-defined, and difficult to measure.”³⁰

D. The Prometheus Decision.

After various parties challenged the 2003 Order, the United States Court of Appeals for the Third Circuit upheld the elimination of the NBCO Rule, as well as the Commission’s

²⁵ *Id.* at 13802.

²⁶ *Id.* at 13759-60.

²⁷ *Id.* at 13767.

²⁸ *Id.* at 13761. The FCC’s conclusions on this issue were supported by independent studies commissioned by the agency. *See, e.g.*, David Pritchard, Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign (FCC Media Ownership Working Group Report #2), September 2002.

²⁹ 2003 Order, 18 FCC Rcd at 13760-61

³⁰ *Id.* at 13767.

conclusions underlying its repeal.³¹ The court noted that no party had appealed the FCC’s determination that “[a] newspaper-broadcast combination . . . cannot adversely affect competition.”³² The Court also agreed that newspaper/broadcast combinations promote localism.³³ In addition, the Court readily determined that the Commission had “reasonably concluded” that it did not have confidence in the proposition that commonly owned properties assert uniform bias, and the Court agreed on the importance of the availability of other media, including the acceptability of the FCC’s finding that technologies that had emerged since 1975, such as cable and the Internet, contribute to viewpoint diversity.³⁴

The court, however, found fault with the methodology used to derive the “Cross-Media Limits” (“CMLs”), which the FCC had adopted in lieu of the NBCO Rule, and in particular the Commission’s “diversity index” on which the CMLs were based. Although the court rejected use of this metric, it did not question the Commission’s finding that the public interest benefits that can be realized from cross-ownership significantly outweigh the impact of a reduced number of independently owned outlets. Nor did it challenge the Commission’s reliance on the abundance of television stations in large markets to justify the complete repeal of its ban on newspaper/television cross-ownership. Based on its concern over the CMLs, the Third Circuit reversed and remanded the 2003 Order, directing that the Commission conduct further proceedings to justify any specific limits it adopted.

³¹ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (2004).

³² *Id.* at 398.

³³ *Id.* at 398-99.

³⁴ *Id.* at 399-400.

E. 2006 Quadrennial Review and FNPRM.

Approximately two years later, the Commission issued a notice of proposed rulemaking with the dual purpose of soliciting public comment on remanded issues and simultaneously initiating the 2006 Quadrennial Review under Section 202(h).³⁵ The 2006 proceeding generated yet another massive record on newspaper/broadcast cross-ownership, including voluminous comments, ten FCC-commissioned peer-reviewed studies and six official field hearings.³⁶ In the resulting order released in February 2008, the FCC confirmed its prior determination that a “complete ban” on newspaper/broadcast cross-ownership “is not necessary in the public interest as a result of competition, diversity, or localism.”³⁷ The Commission found that (1) “ample evidence in the record” indicated that “marketplace conditions have indeed changed and thus justify a recalibration,” (2) “the largest markets contain a robust number of diverse media sources,” (3) “diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations,” (4) many combinations exercise “independent editorial control,” and (5) “newspaper/broadcast combinations can create synergies that result in more news coverage for consumers,” thus enhancing localism.³⁸ The FCC observed that the “media marketplace today is profoundly different” than it was in 1975, “when two mature industries – daily newspapers and broadcasting – constituted the only ‘mass media’ providing local news and information to most

³⁵ 2006 Quadrennial Regulatory Review, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006) (“2006 FNPRM”).

³⁶ 2006 Quadrennial Regulatory Review, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (5 19) (2008) (“2008 Order”), *appeal pending sub nom. Prometheus Radio Project v. FCC*, Nos. 08-3078, et al. (3d Cir. filed July 15, 2008)

³⁷ 2006 Quadrennial Regulatory Review, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2021-22 (¶ 19) (2008) (“2008 Order”), *appeal pending sub nom. Prometheus Radio Project v. FCC*, Nos. 08-3078, et al. (3d Cir. filed July 15, 2008).

³⁸ *Id.* at 2021-22 (¶ 19), 2038-39 (¶ 49).

American communities.”³⁹ The Commission also emphasized the “adverse financial conditions” facing the newspaper industry in recent years, including a steep loss in circulation, reduction in the number of professional journalists, migration of advertising dollars to the Internet, and increase in newspapers’ operational expenses.⁴⁰

Despite the Commission’s conclusions that competition, localism, and diversity did not support a complete ban on newspaper/broadcast cross-ownership and that such a ban was unnecessary, the 2008 Order retained the NBCO Rule and grafted onto it a set of very modest waiver standards, based on the size of the market and other factors.⁴¹ Numerous parties challenged the 2008 Order in several federal circuits, and the cases were ultimately transferred to the Third Circuit.⁴² Earlier this year, that court lifted a stay that it had first put in place in September 2003 and continued in its 2004 decision and a 2009 order, thus allowing the NBCO Rule, as revised by the 2008 Order, to take effect on March 23, 2010.

F. 2010 Quadrennial Review.

With the 2008 Order unresolved, last fall, the FCC launched its 2010 Quadrennial Review by holding several workshops. Those workshops have addressed, among other things, the general scope and framework for the review; the Commission’s diversity, localism, and competition goals; studies and data-gathering that the agency should undertake in the course of the review; financial and marketplace issues; minority media ownership; local television and

³⁹ 2008 Order at ¶¶ 21, 24.

⁴⁰ *Id.* at ¶¶ 27-32.

⁴¹ *Id.* at ¶ 50.

⁴² The Judicial Panel on Multidistrict Litigation consolidated the appeals originally filed in the United States Courts of Appeals for the First, Third, Sixth, Ninth, and District of Columbia Circuits and determined by random selection that the case would be heard in the Ninth Circuit. In re: Federal Communications Commission, In the Matter of 2006 Quadrennial Regulatory Review, RTC No. 95 (J.D.P.M.L. Mar. 11, 2008). The Ninth Circuit Court of Appeals subsequently transferred the case to the Third Circuit. *Media Alliance v. FCC*, Nos. 08-70830, *et al.* (9th Cir. Nov. 4, 2008).

radio marketplace issues; and the NBCO Rule.⁴³ In addition, the FCC recently initiated a separate proceeding on “The Future of Media and Information Needs of Communities,” which seeks to address issues such as how people get news and information and financial trends affecting newspapers and broadcasters.⁴⁴

With this latest NOI, the FCC is poised to make significant changes. Given the deteriorating financial health of the newspaper and broadcast industries and the increasing competition they face from new technologies, the record evidence produced in response to the NOI will lead inexorably to the conclusion that the NBCO Rule should be repealed.

III. UNLIKE 1975, THE MARKETPLACE FOR MEDIA CONTENT IS TODAY REMARKABLY COMPETITIVE AND DIVERSE.

Tribune, like many other parties participating in Biennial and Quadrennial Review proceedings, has demonstrated multiple times in its previous comments that the increase in the number of “traditional media” voices that has occurred since 1975 has undermined any rationale for retaining the NBCO Rule. In these comments, Tribune yet again provides a market-by-market review for each of the five cities where Tribune owns or has an attributable interest in newspaper/broadcast combinations, demonstrating that traditional media markets continue to grow and afford consumers and advertisers an abundance of media choices.

⁴³ *Media Bureau Announces Media Ownership Workshop in Stanford, California*, News Release, MB Docket No. 09-182 (rel. Apr. 20, 2010); *Media Bureau Announces Media Ownership Workshop in Tampa, Florida*, News Release, MB Docket No. 09-182 (rel. Mar. 17, 2010); *Media Bureau Announces February 23, 2010 Media Ownership Workshop in Columbia, South Carolina*, News Release, MB Docket No. 09-182 (rel. Jan. 28, 2010); *Media Bureau Announces Agenda and Panelists for Minority Media Ownership Workshop*, News Release, MB Docket No. 09-182 (rel. Jan. 22, 2010); *Media Bureau Announces Panelists and Agenda for Media Ownership Workshop on Financial and Marketplace Issues*, News Release, MB Docket No. 09-182 (rel. Jan. 5, 2010); *Media Bureau Announces Agenda and Participants for Initial Media Ownership Workshops and Seeks Comment on Structuring of the 2010 Media Ownership Review Proceeding*, Public Notice, 24 FCC Rcd 12,584 (2009) (“2010 Quadrennial Review Public Notice”).

⁴⁴ FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age, Public Notice, GN Docket No. 10-25, DA 10-100 (rel. Jan. 21, 2010) (“Future of Media Public Notice”).

In the thirty-five years since adoption of the NBCO Rule, advances in technology have produced innumerable competitive and diverse voices. Initially, these new challengers to “traditional media” consisted principally of cable and satellite systems. More recently, the Internet, advanced broadband, new wireless sources, and mobile applications have created a true profusion of alternatives. Some of these new technologies and platforms aggregate, retransmit and independently monetize content created by “traditional media” sources.⁴⁵ Other technologies, such as the Internet, have dramatically reduced the steep entry barriers and have spawned the creation of independent news and programming sources, unaffiliated with “traditional media.” With the increased competition and diversity heralded by these new technologies and entrants, the NBCO Rule is clearly no longer necessary in the public interest.

A. The National Media Marketplace Is Radically Different Than in 1975.

The national media marketplace has evolved and developed over the past thirty-five years. Service-by-service in the “traditional media” categories, the options available to consumers and advertisers include the following:

Broadcast Television Stations. The number of licensed full-power television stations has nearly doubled since 1975 from 953 to 1,782, and low-power television stations have increased from none to 7,282.

⁴⁵ E.g., Google News searches for and aggregates content created and published by others, then sells for itself, advertising on search results pages and sponsorship links; Apple’s iPhone and iPad are closed technologies that, with the participation of content creators, sell content created by others for display on their proprietary devices, for a share of sale proceeds.

Broadcast Television Station Totals⁴⁶

	1975	2001	2006	2009
Full-power television stations	953	1,695	1,756	1,782
Low-power television stations	0	2,648	2,794	7,282
Total television stations	953	4,343	4,550	9,064

In the Commission’s latest report on video competition, the agency noted that “[h]undreds of local stations are using their digital channels to provide multicast programming, including news, weather, sports, religious material, music videos, and coverage of local musicians and concerts, as well as foreign language programming.”⁴⁷

Multichannel Video Program Distributors (“MVPDs”). The growth of cable television, a fledgling service in 1975, has historically been the source of the greatest increase in programming options since the NBCO Rule’s adoption. Although cable service has lost ground in recent years to newer MVPDs (namely direct broadcast satellite (“DBS”) and the telephone company video service providers, together “non-cable MVPDs”⁴⁸), cable remains a prominent means by which viewers receive television programming. From adoption of the NBCO rule in 1975 to the height of cable penetration in 2001, cable subscribership rose from just under 10 million to nearly 70 million subscribers. In 2001, cable television service was available to more than 96% of U.S. television homes, and 68% of television households subscribed to cable

⁴⁶ Broadcast Station Totals Index, *available at* <http://www.fcc.gov/mb/audio/totals/index.html> (last visited July 6, 2010) (where possible, citations are to fourth quarter figures for year in question).

⁴⁷ *13th Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189 at para. 16 (rel. Jan. 16, 2009) (“*13th Annual Video Competition Report*”).

⁴⁸ Consumers also now may choose from among multiple options for MVPD service including cable systems, two DBS operators and, in many areas, a telephone company providing video service. *See, e.g.*, Verizon, FiOS TV, About FiOS, <http://www22.verizon.com/residential/fiostv#features> (last visited July 10, 2010); AT&T, U-verse, What is AT&T U-verse?, AT&T U-Verse TV, <http://www.att.com/u-verse/explore/feature-landing.jsp> (last visited

service.⁴⁹ With the introduction and growth of competitive services, cable subscribership on a national basis has declined since then, and now stands at 48.5% or 61.8 million subscribers.⁵⁰

Although non-cable MVPDs were practically non-existent in 1975, they now offer very competitive television programming services that have substantially eroded cable's dominance among MVPDs. In 2001, non-cable MVPDs delivered programming to 16.9% of television households; as of 2007 they delivered programming to 29.2% of television households.⁵¹ But regardless of type, the growth of the MVPD industry corresponds with declines in broadcast television's day share. In 1998, stations affiliated with ABC, NBC or CBS boasted a 37.4 share, while cable claimed a 35.0 share; by the end of 2007 the cable share had risen to a 51.0 share and the broadcast share had dwindled to 22.9.⁵²

The abundant programming choices MVPDs offer may explain the inroads they have made into broadcast television's audience share. As of 2005, cable systems and non-cable MVPDs throughout the nation offered an average of more than 230 channels,⁵³ a number that has certainly increased since then and to which must be added hundreds and, on some systems, thousands, more programming choices available on-demand.⁵⁴ The hundreds of channels

July 10, 2010). The telephone companies' video services also offer access to local broadcast stations.

⁴⁹ NCTA, Industry Data: Operating Metrics, *available at* <http://www.ncta.com/Stats/BasicCableSubscribers.aspx> (last visited July 7, 2010).

⁵⁰ NCTA, Industry Data: Availability, *available at* <http://www.ncta.com/StatsGroup/Availability.aspx> (last visited July 6, 2010).

⁵¹ *13th Annual Video Competition Report*, MB Docket No. 06-189 at para. 7 (rel. Jan. 16, 2009).

⁵² NCTA 2008 Industry Overview, *available at* http://i.ncta.com/ncta_com/PDFs/NCTA_Annual_Report_05.16.08.pdf (last visited July 7, 2010).

⁵³ *13th Annual Video Competition Report* at 561-62 (¶ 44) & Table 4 (2009) ("") (230.6 is the average of the number of cable channels offered by systems facing effective competition (234.9) and those not (226.3)). The 2005 data are the most recent that have been publicly reported by the FCC.

⁵⁴ *See, e.g.*, Comcast Corporation, Digital Cable Service With On Demand from Comcast, <http://www.comcast.com/Corporate/Learn/DigitalCable/digitalcable.html> (last visited July 12, 2010) (indicating that its systems offer 17,000 on demand choices).

available through MVPDs include not only local broadcast stations and cable entertainment channels but also numerous networks focused on providing local news and information. In comparison, as of 2000, only a minute proportion (0.15%) of cable systems offered consumers 125 or more channels, while the majority of systems (more than 62%) offered only 30-53 channels.⁵⁵ The upsurge in programming options corresponds to cable's significant increase in annual spending on programming to \$18.8 billion in 2007, up from \$1.4 billion in 1990. Of the hundreds of programming channels cable systems deliver, the majority were not affiliated with any other media entity (broadcast, broadcast network or cable) or vertically integrated with a national broadcast network or other broadcast entity.⁵⁶

In the face of increasing competition for MVPD subscribers and consumer demand for greater programming choices, cable operators have upgraded their facilities to provide for digital video and broadband cable service. As of 2010, cable operators provided digital cable to almost 43.5 million customers and passed more than 100 million homes with digital video and high-speed data capability.⁵⁷ The variety of programming channels that cable provides to consumers has increased dramatically - nearly doubling in fewer than five years leading up to 2008.⁵⁸

Broadcast Radio Stations. The number of terrestrial radio stations has increased, as have the types of terrestrial audio services and transmission-modes available since 1975:

⁵⁵ *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Seventh Annual Report, 16 FCC Rcd 6005, 6103 (Table B-3) (2001).

⁵⁶ *13th Annual Video Competition Report* at para. 20 (rel. Jan. 16, 2009).

⁵⁷ NCTA, Industry Data: Availability, *available at* <http://www.ncta.com/StatsGroup/Availability.aspx> (last visited July 6, 2010).

⁵⁸ NCTA 2008 Industry Overview, *available at* http://i.ncta.com/ncta_com/PDFs/NCTA_Annual_Report_05.16.08.pdf (last visited July 7, 2010).

Terrestrial Broadcast Radio Station Totals⁵⁹

	1975	2001	2006	2009
FM Stations	3,353	8,348	9,083	9,630
AM Stations	4,432	4,772	4,754	4,790
Total Stations	7,785	13,120	13,837	14,420

Since July 2001, the Commission has licensed 864 low power FM stations, providing yet more outlets for local news, views, civic and entertainment programming in communities throughout the nation.⁶⁰ And in the last several years, digital radio technology has permitted radio stations to broadcast multiple audio streams, thereby increasing the number and variety of formats and programs available to the public.

Satellite Radio. Subscriber-based satellite radio was launched in 2001 and rapidly accepted by the public. Satellite radio (through a single provider, Sirius XM Radio) offers more than 200 digital channels of audio programming in a seemingly endless variety of formats including international and national news, sports, traffic, weather, political talk, foreign language, special interest/lifestyle, personality-driven information and entertainment channels, and genre-specific music.⁶¹ In addition to these national choices, satellite radio also offers *local* traffic and weather information.⁶² With these offerings, and more, as of June 30, 2010, satellite

⁵⁹ Broadcast Station Totals Index, *available at* <http://www.fcc.gov/mb/audio/totals/index.html> (last visited July 6, 2010) (where possible used fourth quarter figures for the year in question).

⁶⁰ *Id.*

⁶¹ Sirius XM Radio also offers subscribers Internet and wireless applications through which to access to its programming; navigation services for GPS systems in more than 80 North American markets; and Backseat TV, an in-vehicle rear seat entertainment service featuring Nickelodeon, Disney Channel and Cartoon Network. *See* www.sirius.com (last visited July 8, 2010).

⁶² Sirius Satellite Radio: Traffic & Weather Radio, *available at* <http://www.sirius.com/trafficweather> (last visited July 11, 2010).

radio boasted 19.6 million subscribers nationwide⁶³ – nearly twice the 11.49 million subscribers just four years ago when (pre-merger) Sirius reported 4.6 million⁶⁴ and XM reported 6.89 million subscribers nationwide as of June 30, 2006.⁶⁵ The wide availability of satellite radio programming - an important source of news, information and entertainment programming - contributes to competition and diversity in every market across the nation, on both a national and local basis.

Newspapers. Newspapers are not the dominant news source they were in 1975. In fact, compared to the popularity of every other medium of mass communications, newspaper readership is the only category to steadily decline in use since 2000. Competition from electronic and online media has led to significant newspaper circulation losses. National daily newspaper circulation declined by 8% between 1975 and 2000, and by another 17% between 2000 and 2008.⁶⁶ Adult readership likewise has declined between from 55.1% in 2000 to 43% in 2008.⁶⁷ The daily newspaper remains a vital and relevant voice; however, the proliferation and rapid consumer adoption of alternative voices in the national and local media marketplace undermine any claim that daily newspapers today dominate public discourse.

⁶³ *Sirius XM Subscriber Base Grows 6%; Year View Raised Again*, WALL STREET JOURNAL, available at <http://online.wsj.com/article/BT-CO-20100707-704968.html> (Published July 7, 2010).

⁶⁴ Sirius Satellite Radio, *Sirius Adds 600,000 Net New Subscribers in Second Quarter 2006*, available at <http://investor.sirius.com/releasedetail.cfm?releaseid=202973> (rel. July 6, 2006).

⁶⁵ *XM Satellite Radio Reaches 6.89 Million Subscribers During Second Quarter of 2006*, available at <http://www.prnewswire.com/news-releases/xm-satellite-radio-reaches-689-million-subscribers-during-second-quarter-of-2006-55829677.html> (last visited July 12, 2010); *SIRIUS Reports Strong Second Quarter 2006 Results*, available at <http://investor.sirius.com/releasedetail.cfm?releaseid=205864> (last visited July 12, 2010).

⁶⁶ Newspaper Association of America, *Total Paid Circulation: 1940-2008*, available at <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx> (last visited July 6, 2010).

⁶⁷ Newspaper Association of America, *Readership: 1998-2007*, available at <http://www.naa.org/TrendsandNumbers/Readership.aspx> (last visited July 6, 2010) and Newspaper Association of America, *2008: Daily and Sunday Paper Audience Report*, available at http://www.naa.org/docs/TrendsandNumbers/2008_Audience_Report_Active.pdf (last visited July 6, 2010).

B. Common Ownership of Newspaper/Broadcast Properties in Tribune's Cross-Ownership Markets Has Not Undermined Competition, Reduced Diversity, or Compromised Localism.

As noted above, Tribune publishes daily newspapers and owns full-service broadcast stations in Los Angeles, California; Chicago, Illinois; South Florida (Miami/Fort Lauderdale); and Hartford, Connecticut. In New York City, Tribune owns a full-service broadcast station and has a three percent indirect equity interest in (but does not operate) a daily newspaper. Multiple times, in both the context of rulemaking proceedings and in long-form license assignment applications, Tribune has supplied the Commission with a wealth of data and information about these five cross ownership markets.⁶⁸

In rulemaking comments filed in December 2001 and again in October 2006, Tribune provided abundant factual support demonstrating that newspaper/television station combinations do not dominate public discourse or control the dissemination of news and information to the public.⁶⁹ The updated information below from these five markets confirms that Tribune's continued cross-ownership of daily newspapers and television stations does not hinder growth or undermine competition, reduce diversity, or compromise localism in these locales.

1. New York.

New York is the largest media market in the country, with nearly 7.5 million television homes.⁷⁰ As detailed in Tribune's WPIX(TV) Assignment Application,⁷¹ the New York DMA is

⁶⁸ See *supra*, at 6; *Applications of Shareholders of Tribune Company for Consent to Transfer Control of Broadcast Station Licenses*, MB Docket 07-119 (applications filed May 1, 2007), File Nos. BRCT-20060811ASH, et al.; *Applications of Tribune Company for Consent to Assignment of Broadcast Station Licenses*, MB Docket 10-104 (applications filed April 28, 2010).

⁶⁹ See 2001 Tribune Comments; 2006 Tribune Comments.

⁷⁰ TVB Research Central, Market Track, *US TV Households by Market*, http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp (last visited Feb. 2, 2010) (based on Nielsen Media Research, Inc., Nielsen Station Index (NSI), estimates for the 2009-2010 television season effective September 21, 2009).

⁷¹ Application for Consent to Assignment of Broadcast Station Construction Permit or License, BALCDT-

diverse and competitive, with 23 television stations owned by 17 owners, 240 radio stations owned by 119 owners, and 28 daily newspapers published by 15 publishers.⁷² Tribune owns WPIX(TV), New York, a CW Network affiliate currently ranked sixth in the market,⁷³ and maintains a minimal attributable, indirect equity interest in Newsday Holdings, LLC, the publisher of *Newsday* (Long Island).⁷⁴

Television Stations. The New York DMA has 23 full-power broadcast television stations (up from 10 in 1975), owned by 17 separate owners.⁷⁵ The big-four networks all own stations in New York, and Fox, NBC, and Univision own duopolies. As in other markets, broadcast television ratings in New York are generally in decline, as shown in the chart below and in Attachment 1 hereto.

20100428ADP, Exhibit 16 (the “WPIX(TV) Assignment Application”).

⁷² See WPIX(TV) Assignment Application, Attachment 4 (Mark R. Fratrik, Ph. D., BIA Financial Network, *Report on the New York, NY Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Television Station WPIX(TV)*, at 22 (Feb. 26, 2010) (“New York BIA Report”).

⁷³ See Attachment 1.

⁷⁴ Tribune acquired *Newsday* in its March 2000 merger with Times Mirror, and in July 2008, reduced its interest in the newspaper pursuant to a transaction with Cablevision Systems Corporation (“Cablevision”). As a result, Tribune now indirectly holds only an approximate 3% equity interest in the parent company of *Newsday*’s publisher, Newsday, LLC; Cablevision owns the remaining approximate 97% interest and maintains operational control of Newsday, LLC.

⁷⁵ See New York BIA Report, at 22 at Appendix B-1; see also Attachment 1.

New York Television Stations with A 1 Share or Greater⁷⁶

Station	Owner	Current Affiliation	1975	2001	2010
WABC-TV	ABC, Inc.	ABC	18	12	9.5
WCBS-TV	CBS Broadcasting, Inc.	CBS	22	8	7.5
WNYW	Fox Television Stations	FOX	14	6	5.8
WNBC	NBC Universal	NBC	24	12	5.5
WXTV	Univision Communications	Univision	<1	3	3.7
WPIX	Tribune Broadcasting Co.	CW	8	8	3.5
WWOR-TV	Fox Television St'ns	MyNetworkTV	10	6	2.4
WNJU	NBC Universal	Telemundo	<1	2	1.8
WFUT-TV	Univision Communications	TeleFutura	NA	<1	1.3
WNET	Educational Broadcasting Corp.	Educational	3	2	1.3
WPXN-TV	Ion (Paxson)	Pax	NA	1	0.9

Notwithstanding Tribune's ownership of WPIX(TV) and *Newsday* from 2000 to mid-2008, the New York television market has grown increasingly diverse and competitive since 1975. A review of the declining audience shares for broadcast television stations in New York demonstrates that diversity and competition are robust, and have increased over time:

- In 1975, the largest share earned by a television station was 24 (WNBC(TV)) and by May 2001, the largest share was just 12 (WNBC(TV)/WABC-TV).⁷⁷ In May

⁷⁶ All ratings are from the Nielsen Station Index for May of the year reported. Ratings and shares are based on 9:00 am -- midnight time period. *See also* Attachment 1.

⁷⁷ *See* 2006 Tribune Comments at p. 36

2010, the largest share earned was 9.5 (WABC-TV), only six stations earned shares of 3 or greater, and WPIX(TV)'s share was just 3.5.⁷⁸

- In 1975, five stations earned an audience share of 10 or better; by 2001 only the top two earned an audience share of 10 or better.⁷⁹ In May 2010, no station in the market had a share of 10 or more.⁸⁰
- In 1975, the top six rated stations combined for an audience share of 96; by 2001, that collective share had declined to 52.⁸¹ In 2010, their collective share has decreased even further to 35.5.⁸²

There is no reason to expect any change in these trends. These audience share data demonstrate that common ownership of media properties by Tribune has not hindered, and will not harm in the future, the growth of diversity and competition in New York, where a large number of alternative outlets are available. Nor has common ownership vested in WPIX a discernable competitive advantage in viewership. As the total number (and historical increase) of media outlets in the market demonstrates, there are many places for WPIX(TV)'s viewers to go for alternative sources of entertainment and news.

While audience shares for the once-dominant television stations have declined steadily over time, the amount of local news programming has increased and competition is plentiful.⁸³

As indicated in Tribune's WPIX(TV) Assignment Application, an excerpt from which is appended hereto in Attachment 2, eight stations in the New York DMA produce more than 180

⁷⁸ See Attachment 1.

⁷⁹ See 2006 Tribune Comments at p. 36

⁸⁰ See Attachment 1.

⁸¹ See 2006 Tribune Comments at p. 36

⁸² See Attachment 1.

⁸³ There are also four independently owned Class A television stations in the New York DMA, each of which is required under 47 C.F.R. § 73.6002(b)(2) to broadcast an average of at least three hours per week of locally produced programming each quarter. And, there are 31 non-Class A low power television stations owned by 18 separate owners. See New York BIA Report, at 22; *id.* at Appendix C.

hours of local news each week, including four stations that provide at least 29 hours a week of local news.⁸⁴ WPIX(TV) provides 29.5 hours of news programming each week despite the loss of audience share to other stations and non-broadcast news providers.⁸⁵

In addition to the full-power television stations serving the New York DMA, there are now 30 additional multicast programming streams available in the market, reflecting the continuing efforts of broadcasters to serve the diverse needs of viewers and the interests of niche markets in a digital multicast channel format.⁸⁶

Multichannel Video Programming Distributors (“MVPDs”). As of November 2009, cable penetration in the New York DMA was 85.5%; 12.5% of the households in the DMA subscribed to non-cable MVPDs, and total MVPD penetration was 96.5%, giving the New York DMA the fourth-highest MVPD penetration in the country.⁸⁷ Both cable and non-cable MVPDs in the New York DMA provide local broadcast stations to their subscribers, including DirecTV and DISH Network, which offer local-into-local service.⁸⁸ New York MVPD subscribers that seek news and information programming options are not limited to the local broadcast stations their MVPD provides, however. In addition to national cable news networks such as CNN,

⁸⁴ See Attachment 2.

⁸⁵ See *id.* WPIX(TV) has recently ceased production of its early evening (6:30PM) newscast.

⁸⁶ See New York BIA Report, at 22 n.35; *id.* at Appendix B-2.

⁸⁷ See TVB Research Central, Market Track, *Cable and ADS Penetration by DMA: New York, NY*, http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (last visited Feb. 10, 2010) (based on Nielsen Media Research, DMA Household Universe Estimates). Total MVPD penetration values may differ from the sum of cable and alternative penetration values because Nielsen includes households subscribing to both in each category.

⁸⁸ See DirecTV, The Guide, <http://www.directv.com/DTVAPP/epg/theGuide.jsp> (last visited Feb. 10, 2010); DISH Network, Programming, <https://customersupport.dishnetwork.com/customernetqual/prepAddress.do> (last visited Feb. 10, 2010). Full listings of the channels offered by DirectTV and DISH Network in New York are appended to the WPIX(TV) Assignment Application as Attachment 5.

MSNBC, and FOX News, multiple local cable networks offer programming of particular interest to local residents. These include the following:

- New York 1/NY1 Noticias, a 24-hour local news channel carried on Cablevision and Time Warner systems in both English and Spanish formats;
- News 12, a 24-hour news channel with versions for Brooklyn, the Bronx, Long Island, New Jersey, and Connecticut;
- FiOS1, a 24-hour news channel covering Long Island and northern New Jersey;
- Manhattan Neighborhood Network, a public access television channel providing programming on the activities, meetings, hearings, and public affairs of the 12 community boards of Manhattan;
- New York State Legislative Proceedings Channel, a government channel providing gavel-to-gavel coverage of Assembly sessions and other legislative proceedings;
- MSG and MSG Plus, networks producing and televising games of the New York Knicks, New York Rangers, New York Liberty, New York Red Bulls, New Jersey Devils, and the New York Islanders, as well as musical, cultural, and other events at Madison Square Garden;
- YES Network, another channel offering extensive local and regional sports coverage;
- SportsNet New York, an additional channel providing extensive local and regional sports coverage, including exclusive live telecasts of New York Mets baseball games and other professional and collegiate sports;
- Bronxnet, a group of local public access channels; and
- Archdiocese of New York Instructional Television, a specialized channel providing local educational religious programming, including more than 150 courses and daily broadcasts of Catholic mass.⁸⁹

In addition to contributing significant program diversity, cable channels have increasingly taken audience share from New York broadcasters. For example in New York:⁹⁰

⁸⁹ Additional information regarding the local cable channels available in the New York DMA is reflected in Attachment 6 to the WPIX(TV) Assignment Application.

⁹⁰ The discussion below is based on 9 am – midnight shares during the May 2009 sweeps period, as reported by Nielsen.

- Seven cable networks (Nickelodeon, TNT, Noggin, Disney Channel, ESPN, USA Network, and YES Network) rank among the top 15 channels viewed in the New York DMA and another three (TBS, Fox News Channel, and CNN) are in the top 20.
- 29 cable channels rank among the top-40 rated channels viewed in the New York market, beating 12 New York broadcast stations in the DMA that do not even rank among the top 40.
- 21 cable channels earn a 1 audience share or greater, beating 13 of the broadcast stations in the New York DMA which do not attain at least a 1 share.
- In addition to the 21 cable channels with a 1 share or greater more than 100 other satellite programming channels carried on cable and/or DBS received a 0.1 share or greater in the New York DMA in May 2009, including new or strengthened cable networks such as CNBC, Comedy Central, New York 1, News 12, BBC America, MSG Network, Gala, and Oxygen.

Local audience share data demonstrate that competition from the variety of program options offered by MVPDs has significantly reduced the market shares of local broadcast television voices, both individually and collectively.

Newspapers and Print Media.⁹¹ The New York newspaper market is similarly characterized by intense competition, with 28 daily newspapers and 337 weekly newspapers published in New York and the surrounding suburbs. Like other markets, despite substantial population growth, the combined circulation of daily newspapers in New York has declined significantly in recent years. Still, the New York newspaper market remains competitive with

⁹¹ Circulation data included in this section were obtained from several sources. The 2009 daily circulation figures for *The Record/The Sunday Record*, *The New York Sun*, the *Herald News*, and the *Sunday Hour* were obtained from the BIA/Kelsey Media Access ProTM Database, New York, NY Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for daily circulation reported therein as of August 19, 2009. The 2009 daily circulation data for all other daily newspapers discussed in this section are based on information from the Audit Bureau of Circulations for the six-month period ending March 29, 2009, and are current as of October 3, 2009. The 2009 daily circulation figures represent Monday – Friday (5 Day) circulation averages, except for the *Courier News*, the *Daily Record*, and the *Home News Tribune* which represent Monday – Saturday (6 Day) circulation averages. The 2009 daily circulation figure for *The New York Times* represents circulation in the Mid-Atlantic Region (rather than nationally). Circulation data for the weekly newspapers discussed in this section were obtained from the BIA/Kelsey Media Access ProTM Database, New York, NY Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for total circulation reported therein as of February 4, 2010.

The New York Times, the *Daily News*, the *New York Post*, *Newsday* and others,⁹² competing for readers. As submitted in Tribune's WPIX(TV) Assignment Application, circulation figures for the top four daily newspapers are as follows:

Top Daily Newspapers	2001 Circulation	2009 Circulation
<i>The New York Times</i>	1,109,371	1,039,031
<i>Daily News</i>	734,473	602,857
<i>New York Post</i>	533,860	558,140
<i>Newsday</i>	577,354	368,194
Combined Circulation	2,955,058	2,568,222

Daily circulation at *Newsday* is down 36% since 2001, and combined circulation at the top four newspapers declined 13% over that same time period.

In addition to these four dailies, 24 other daily newspapers also serve the New York DMA, with at least 11 additional publishers represented in the market.⁹³ These newspapers include:

- The *Star-Ledger of Newark*, with a circulation of 287,012 and *The Record/The Sunday Record*, with a circulation of 162,700.
- Twelve newspapers with circulations between 10,000 and 50,000, including the *Home News Tribune* (42,243), the *Herald News* (34,300), the *Poughkeepsie Journal* (31,879), the *Daily Record* (29,732), *The News-Times* (25,695), the *Courier News* (22,691), *The Jersey Journal* (23,815), *The Advocate* (20,287), the *Daily Freeman/Sunday Freeman* (16,510), *The Sunday Hour* (14,500), *The New Jersey Herald* (13,258), and the *Greenwich Time* (9,622).

In addition to dailies, at least 337 weekly newspapers published by 128 different owners are currently distributed in the DMA.⁹⁴ North Jersey Media Group Inc., for example, publishes *The*

⁹² In addition, New York dailies *The Wall Street Journal* and *The New York Times* have national circulation. Recently, *The Wall Street Journal* announced plans to launch a New York Metro section to increase its coverage of local news. Howard Kurtz, *Wall Street Journal To Add Metro Section To Compete With New York Times*, N.Y. TIMES, Apr. 5, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/04/AR2010040402746.html?hpid=news-col-blog> (last visited July 12, 2010).

⁹³ See New York BIA Report, at 22; *id.* at Appendix D.

Record/The Sunday Record plus more than 29 separate weekly papers in communities around New York.⁹⁵ Other weekly newspapers include *South Bay's Official Shopping Newspaper* (525,000), *The Courier Life* (75,000), *The New York Observer* (52,000), *The Flushing Times* (45,000), the *Independent Press* (36,000), the *Mahwah Suburban News* (30,000), *The Villager* (20,000), *The Suffolk Times* (10,500), and *The Warwick Advertiser* (8,500). More than 65 of these weekly newspapers have a paid circulation level of 10,000 or more, while more than 50 additional papers have free circulation exceeding 10,000. In addition, more than 178 weekly publications have paid circulations of between 1,000 and 10,000.

In addition to these daily and weekly newspapers, there is a wide variety of other print media that deliver local information to New Yorkers. These include multitudes of specialty newspapers serving diverse interests (including at least 14 newspapers serving the Hispanic community), shopper publications, college newspapers and local magazines.⁹⁶

Terrestrial and Satellite Radio Services.

The New York DMA has 240 commercial and non-commercial AM and FM radio stations owned by 119 entities with the following characteristics:⁹⁷

- 37 stations operated by 24 different owners offer news, sports, talk and information formats;
- 25 stations operated by 19 different owners offer educational and religious formats;

⁹⁴ See *id.* This list includes *Fairfield County Weekly*, which is owned by Tribune.

⁹⁵ See *id.* at Appendix D.

⁹⁶ See *id.*

⁹⁷ See New York BIA Report, at 22; *id.* at Appendix E. In the more limited radio geographic market as defined by the local radio ownership rule as revised in the 2003 *Order*, there are 149 full power radio stations owned by 85 different owners. See *id.* at 22.

- 24 stations operated by 15 different owners offer Spanish-language or other ethnic formats; and
- More than 151 stations offer a variety of music formats, and three stations offer a children's or family format.

In addition, New York radio broadcasters offer programming on 25 HD multicast streams and there are seven independently owned low power FM stations, each of which by definition must be locally owned by an entity that does not hold attributable interests in any other media.⁹⁸ Finally, in addition to terrestrial radio, XM Sirius offers satellite radio programming on a subscription basis to New York residents, with more than 200 channels, including numerous talk and information channels, multiple local traffic and weather channels and many music channels.⁹⁹

Local Internet & New Media Sources. A recent Scarborough survey on Internet usage revealed that nearly 66.6% of New Yorkers access the Internet at home, 32.1% do so at work, and 10.7% do so in other places (*e.g.*, public libraries).¹⁰⁰ Most respondents indicated that they have broadband connections at home, with 24.8% reporting a DSL connection and 39.8% reporting a cable modem connection.¹⁰¹ Consistent with national trends, New Yorkers are increasingly accessing Internet sources to obtain news, information and entertainment.¹⁰² In addition to national and international online news sources for local and non-local news and information, a wide variety of local news and information sites provide content on a broad range of topics to the New York market.

⁹⁸ See *id.* at 22; *id.* at Appendix F; 47 C.F.R. §§ 73.853(b), 73.860.

⁹⁹ See XM-Sirius Channel Lineup (Attachment 7 to WPIX(TV) Assignment Application).

¹⁰⁰ Scarborough Research, *2009 New York Scarborough Release 1 Study*.

¹⁰¹ *Id.*

¹⁰² See III.C.2., *infra*.

Usage of *independent* local news and information sites is extensive in the New York market. As indicated in Tribune's WPIX(TV) Assignment Application, between January and December of 2009, www.gothamist.com, which focuses on New York news, food, art, and events had 4,285,162 unique visitors and 7,702,822 total visits. Three other independent New York-centric sites had more than 1,000,000 unique visitors; 11 others had more than 100,000 unique visitors; another 10 had more than 50,000 unique visitors; and a substantial number of additional such sites had more than 10,000 unique visitors.¹⁰³ The widespread availability and usage of these independent local websites contribute to the diversity of local news and information available in the New York market and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the New York media marketplace.

Competition in the Advertising Market. Competition for advertisers in the New York market is robust, with traditional media – *i.e.*, newspapers, television, and radio stations -- accounting for 45.5% of total media advertising revenues.¹⁰⁴ Alternative media sources, such as direct mail, cable television, and magazines, account for 54.5%, and new media sources, such as online, Internet yellow pages, mobile, and email marketing, account for 7.6%.¹⁰⁵ Tribune's share is minimal; combining advertising revenues attributable to WPIX(TV) with 3% of those attributable to *Newsday* yields a mere 1.7%.¹⁰⁶ This indicates robust competition for advertisers in the New York DMA and Tribune's relative lack of market power.

¹⁰³ Further information regarding usage of local independent Internet news sites in the market is appended to the WPIX(TV) Assignment Application as Attachment 8.

¹⁰⁴ See New York BIA Report, at 19.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 21.

2. Los Angeles.

Los Angeles is the second-largest DMA in the country, with approximately 5.7 million television homes.¹⁰⁷ As detailed in Tribune's KTLA Assignment Application,¹⁰⁸ the Los Angeles media market is diverse and competitive, with 27 television stations owned by 21 separate owners, 196 radio stations owned by 83 separate owners, and 19 daily newspapers published by nine different publishers.¹⁰⁹ In Los Angeles, Tribune publishes the *Los Angeles Times* (the "LA Times") and owns and operates KTLA(TV), a CW Network affiliate ranked eighth in the market.¹¹⁰

Television Stations. The Los Angeles DMA has 26 broadcast television stations (up from 15 in 1975), owned by 21 separate owners.¹¹¹ The big-four networks all own stations in Los Angeles; CBS, Fox, and Univision own duopolies, and NBC/Telemundo has three stations in the market. As in other markets, broadcast television ratings in Los Angeles are generally in decline, as shown in the chart below and in Attachment 1.

¹⁰⁷ TVB Research Central, Market Track, *US TV Households by Market*, http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp (last visited Feb. 2, 2010) (based on Nielsen Media Research, Inc., Nielsen Station Index (NSI), estimates for the 2009-2010 television season effective September 21, 2009).

¹⁰⁸ Application for Consent to Assignment of Broadcast Station Construction Permit or License, BALCDT-20100428ADV, Exhibit 16 (the "KTLA Assignment Application").

¹⁰⁹ See KTLA Assignment Application, Attachment 4 (Mark R. Fratrik, Ph. D., BIA Financial Network, *Report on the Los Angeles, CA Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Television Station KTLA(TV)*, at 21 (Feb. 26, 2010) ("Los Angeles BIA Report").

¹¹⁰ See Attachment 1.

¹¹¹ See Los Angeles BIA Report, at 21; *id.* at Appendix B-1; see also Attachment 1.

Los Angeles Television Stations With A 1 Share of Greater¹¹²

Station	Owner	Current Affiliation	1975	2001	2010
KABC-TV	ABC, Inc.	ABC	20	11	9
KMEX-TV	Univision Communications	Univision	<1	7	6.4
KCBS-TV	CBS Broadcasting, Inc.	CBS	21	7	5.5
KTTV	Fox Television Stations	FOX	12	7	4.4
KNBC	NBC Telemundo License Co.	NBC	22	12	4.0
KCAL-TV	CBS Broadcasting, Inc.	Independent	7	5	2.7
KTLA	Tribune Broadcasting Co.	WB (CW)	9	7	2.7
KFTR	Univision Communications	TeleFutura	<1	<1	2.4
KRCA	Liberian Broadcasting	Independent	NA	NA	1.3
KVEA	NBC Telemundo License Co.	Telemundo	<1	3	1.8
KCOP-TV	Fox Television Stations	My Network TV	4	5	1.4
KCET	Community TV of S'th'n Cal	Educational	NA	3	1.0
KWHY-TV	NBC Telemundo License Co.	Telemundo	<1	1	0.5

The Los Angeles television market has grown increasingly diverse and competitive since 1975, notwithstanding Tribune's common ownership since 2000 of the *LA Times* and KTLA(TV). A review of the declining audience shares for broadcast television stations in Los Angeles demonstrates that diversity and competition are robust, and have increased over time.

- In May 2001, the top five stations (KNBC(TV), KABC-TV, KCBS-TV, KTTV(TV), KMEX-TV) together had an audience share of 45.2; by May 2010, the collective share of these stations had declined 29.3.¹¹³
- In 1975, the highest-rated station in the Los Angeles market earned a 22 share (KNBC(TV)) and five stations earned a 9 share or better, including KTLA(TV); by May 2001, KNBC(TV)'s share had declined to 12.1, only one other station

¹¹² All ratings are from the Nielsen Station Index for May of the year reported. Ratings and shares are based on 9:00 am -- midnight time period. *See also* Attachment 1.

¹¹³ *See id.*

(KABC-TV) earned a 9 share or better, and four stations, including KTLA(TV), earned approximately a 7 share.¹¹⁴

- By May 2010, only four stations, including KTLA(TV), earned a 4 share or better, including KNBC(TV), whose share had declined to 4, and KABC-TV, the top ranked station with a 9 share.¹¹⁵
- In May 2010, the top four stations (KMEX-TV, KABC-TV, KNBC(TV), and KCBS-TV) together had an audience share of 24.9, only one of these stations earned a 7 share or better, and the largest share earned by a single station was just 9.0 (KABC-TV).¹¹⁶

There is no reason to expect any change in these trends. These audience share data demonstrate that Tribune's common ownership of media properties has not hindered, and will not harm in the future, the growth of diversity and competition in Los Angeles, where a large number of alternative outlets are available. Nor has common ownership vested in KTLA-TV a discernable competitive advantage in viewership. As the total number (and historical increase) of media outlets in the market demonstrates, there are many places for KTLA-TV's viewers to go for alternative sources of entertainment and news.

While audience shares for the once-dominant television stations have declined steadily over time, the amount of local news programming has increased and competition is plentiful.¹¹⁷ As indicated in Tribune's KTLA Assignment Application, an excerpt from which is appended hereto in Attachment 2, 13 stations in the Los Angeles DMA produce some 278 hours of local news each week, with six stations exceeding 20 hours per week.¹¹⁸ KTLA-TV provides 46.5

¹¹⁴ See Attachment 1.

¹¹⁵ See *id.*

¹¹⁶ See *id.*

¹¹⁷ There are also five Class A television stations owned by three separate owners in the Los Angeles DMA, each of which is required under 47 C.F.R. § 73.6002(b)(2) to broadcast an average of at least three hours per week of locally produced programming each quarter. There are also 23 non-Class A low power television stations owned by 19 separate owners. See Los Angeles BIA Report, at 21; *id.* at Appendix C.

¹¹⁸ See Attachment 2.

hours of local news each week, up from 24.5 hours per week at the time Tribune acquired the *LA Times*, despite the loss of audience share to other stations and non-broadcast news providers.¹¹⁹

In addition to the full-power television stations serving the DMA, there are 47 multicast programming streams available in the market as broadcasters have embraced the opportunity to bring additional programming options to viewers and serve niche markets using digital multicast channels.¹²⁰

Multichannel Video Programming Distributors (“MVPDs”). As of November 2009, cable penetration in the Los Angeles DMA was 52.1%, 35.1% of the households in the DMA subscribed to non-cable MVPDs, and total MVPD penetration was 86.3%.¹²¹ Both cable and non-cable MVPDs in the Los Angeles DMA provide local broadcast stations to their subscribers, including both DirecTV and DISH Network, which offer local-into-local service.¹²² Los Angeles MVPD subscribers that seek news and information programming options are not limited to the local broadcast stations their MVPD provides, however. In addition to national cable news networks such as CNN, MSNBC, and FOX News, multiple local cable networks offer programming of particular interest to local residents. These include the following:

- LA City View, a City of Los Angeles government access channel that provides live and taped coverage of City Council meetings and original programming related to city government and services;

¹¹⁹ See *id.*

¹²⁰ See Los Angeles BIA Report, at 21 n.27; *id.* at Appendix B-2.

¹²¹ TVB Research Central, Market Track, *Cable and ADS Penetration by DMA: Los Angeles, CA*, http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (last visited Feb. 10, 2010) (based on Nielsen Media Research, DMA Household Universe Estimates). Total MVPD penetration values may differ from the sum of cable and alternative penetration values because Nielsen includes households subscribing to both in each category.

¹²² See DirecTV, The Guide, <http://www.directv.com/DTVAPP/epg/theGuide.jsp> (last visited July 10, 2010); DISH Network, Programming, <https://customersupport.dishnetwork.com/customernetqual/prepAddress.do> (last visited July 11, 2010). Full listings of the channels offered by DirecTV and DISH Network in Los Angeles are appended to the KTLA Assignment Application as Attachment 5.

- LA36, a City of Los Angeles public access channel that airs locally-produced original programming, such as programs focused on world news and issues and local high school sporting events, as well as numerous public access programs produced by local area residents;
- the California Channel, which is funded by California cable operators and provides live and taped video of California state legislative activities;
- Titan Television, which provides informational and educational programs produced by students at Cal State University-Fullerton and local events coverage on cable systems in Fullerton and Orange Counties;
- numerous local programs offered by Time Warner Cable through its on demand services; and
- Fox Sports West and Prime Ticket, which provide extensive local and regional sports coverage, including professional baseball, basketball, and hockey games and college sports.¹²³

In addition to contributing significant program diversity, cable channels have increasingly taken audience share from Los Angeles broadcasters. For example:¹²⁴

- While 12 over-the-air television stations in the market receive at least a 1 share, 16 cable networks also garner at least a 1 share.
- Eight cable networks rank among the top 20 channels viewed in the Los Angeles market, including TNT, Nickelodeon, Univision's cable network, Fox News Channel, and USA Network.
- Other cable networks also receive approximately a 1 share or better, including HGTV, Comedy Central, the History Channel, CNN, and the Discovery Channel, and thus are viewed more than at least 12 of the broadcast television stations in the Los Angeles DMA.
- Some 47 cable networks earn a 0.5 share or higher, a better share than 14 of the full-power broadcast stations in the Los Angeles DMA.

¹²³ Additional information regarding the local cable channels available in the Los Angeles DMA is reflected in Attachment 6 to the KTLA Assignment Application.

¹²⁴ The discussion below is based on 9 am-midnight shares during the May 2009 sweeps period, as reported by Nielsen.

Local audience share data demonstrate that competition from the variety of program options offered by MVPDs has significantly reduced the market shares of local broadcast television voices, both individually and collectively.

Newspapers and Print Media.¹²⁵ The Los Angeles newspaper market is similarly characterized by intense competition, with 19 daily newspapers and 98 weekly newspapers in Los Angeles and the surrounding suburbs. Like other markets, despite substantial population growth, the combined circulation of daily newspapers in Los Angeles has declined significantly in recent years. Still, the Los Angeles newspaper market remains competitive with the *LA Times* and *The Orange County Register*, *The Press-Enterprise*, the *Daily News*, and others competing for readers. As submitted in Tribune’s KTLA Assignment Application, circulation figures for the top four daily newspapers are as follows:

Top Daily Newspapers	2006 Circulation	2009 Circulation
<i>LA Times</i>	851,832	723,181
<i>The Orange County Register</i>	299,824	230,877
<i>The Press-Enterprise</i>	185,053	140,079
<i>Daily News</i>	157,020	124,033
Combined Circulation	1,493,729	1,218,170

Since 2006, daily circulation at the *LA Times* is down 15% and combined circulation at the top four newspapers is down more than 18%.

¹²⁵ Circulation data included in this section were obtained from several sources. The 2009 daily circulation figures for the *Antelope Valley Press* and *The Signal* were obtained from the BIA/Kelsey Media Access ProTM Database, Los Angeles, CA Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for daily circulation reported therein as of February 3, 2010. The 2009 daily circulation data for all other daily newspapers discussed in this section are based on information from the Audit Bureau of Circulations for the six-month period ending March 29, 2009, and are current as of October 3, 2009. These 2009 daily circulation figures represent Monday – Friday (5 Day) circulation averages. Circulation data for the weekly newspapers discussed in this section were obtained from the BIA/Kelsey Media Access ProTM Database, Los Angeles, CA Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for total circulation reported therein as of February 4, 2010.

In addition to the *LA Times*, 18 other daily newspapers serve the Los Angeles DMA, with at least eight additional publishers represented in the market.¹²⁶ While the *LA Times* is the most widely circulated daily newspaper in the market, Media News Group, Freedom Communications, and Belo, through their various daily newspapers in the greater Los Angeles area, reach approximately 447,000, 263,000, and 140,000 daily readers, respectively. Other daily newspapers in the DMA include:

- *The Orange County Register*, with a daily circulation of 230,877; *The Press-Enterprise*, with a daily circulation of 140,079; the *Daily News*, with a daily circulation of 124,033; the *Press-Telegram*, with a daily circulation of 78,352; the *Ventura County Star*, with a daily circulation of 72,205; the *Daily Breeze*, with a daily circulation of 63,919; and *The Californian*, with a daily circulation of 55,408.
- Eight additional newspapers with daily circulations between 10,000 and 50,000, including *The Sun* (49,949), the *Inland Valley Daily Bulletin* (48,954), the *San Gabriel Valley Tribune* (35,866), the *Daily Press* (28,648), *The Star-News* (25,482), the *Antelope Valley Press* (22,100), *The Whittier Daily News* (13,645), and *The Signal* (12,000).

In addition to these dailies, at least 98 weekly newspapers published by 54 different owners are currently distributed in the DMA.¹²⁷ One leading weekly newspaper publisher is Orange County Register, a subsidiary of Freedom Communications, which publishes the daily *Orange County Register*¹²⁸ and more than 10 weekly papers in communities around Los Angeles.¹²⁹ Several weekly newspapers are published in Los Angeles itself, including the *Los Angeles Downtown News* (49,000), the *Eastside Sun* (24,000), the *Mexican American Sun* (16,000), and the *Los Angeles Independent* (33,000). In addition, at least 60 weekly newspapers in the DMA have a

¹²⁶ See Los Angeles BIA Report at Appendix D.

¹²⁷ See *id.* This list includes weekly newspapers owned by Tribune.

¹²⁸ See *id.*

¹²⁹ See *id.*

total circulation of 10,000 or more, and at least another 25 weekly newspapers have a total circulation level between 1,000 and 10,000.

In addition to these daily and weekly newspapers, there is a wide variety of other print media delivering local information to Los Angeles residents. These include 103 specialty newspapers serving diverse interests, 27 shopper publications, 28 college newspapers, and 76 local magazines.¹³⁰

Terrestrial and Satellite Radio Services. The Los Angeles DMA has 196 commercial and non-commercial AM and FM radio stations owned by 83 entities with the following characteristics:¹³¹

- 27 radio stations operated by 19 different broadcasters offer news, sports, talk and information formats;
- 20 English-language stations operated by 13 different broadcasters offer educational and religious formats;¹³²
- 51 stations operated by 22 different broadcasters, offer Spanish-language or other ethnic formats;¹³³
- More than 90 stations offer a variety of music formats and two stations offer a children's format;¹³⁴

In addition, Los Angeles radio broadcasters offer programming on 28 HD multicast streams,¹³⁵ and there are seven independently owned low power FM stations.¹³⁶ Finally, in

¹³⁰ See *id.* Several of these publications are owned by Tribune.

¹³¹ See Los Angeles BIA Report at 21; *id.* at Appendix E. In the more limited radio geographic market as defined by the local radio ownership rule as revised in the 2003 Order, there are 93 full-power radio stations owned by 45 companies. See *id.* at 21.

¹³² See *id.* at Appendix E.

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ See *id.* at 21; *id.* at Appendix E.

addition to terrestrial radio, XM Sirius offers satellite radio programming on a subscription basis to Los Angeles residents, with more than 200 channels, including numerous talk and information channels, multiple local traffic and weather channels, and many music channels.¹³⁷

Local Internet & New Media Sources. A recent Scarborough survey on Internet usage revealed that nearly 63% of Los Angeles residents access the Internet at home, 29.5% do so at work, and 10.3% do so in other places (*e.g.*, public libraries).¹³⁸ Most respondents indicated that they have broadband connections at home, with 39.4% reporting a DSL connection and 21.1% reporting a cable modem connection.¹³⁹

Consistent with national trends, residents of Los Angeles are increasingly accessing Internet sources to obtain news, information and entertainment.¹⁴⁰ In addition to national and international online news sources for local and non-local news and information, a wide variety of local news and information sites provide content on a broad range of topics to the Los Angeles market.

Usage of *independent* local news and information sites is extensive in the Los Angeles market. As indicated in Tribune's KTLA Assignment Application, between January and December of 2009, www.laist.com, which focuses on Los Angeles news, food, art, and events, had 2,850,945 unique visitors and 4,465,846 total visits. Five other independent Los Angeles-oriented sites had more than 100,000 unique visitors, 12 had between 20,000 and 99,999 unique

¹³⁶ See *id.* at 21; *id.* at Appendix F. Each LPFM must be locally owned by an entity that does not hold attributable interests in any other media, 47 C.F.R. §§ 73.853(b), 73.860.

¹³⁷ See XM-Sirius Channel Lineup (Attachment 7 to the KTLA Assignment Application).

¹³⁸ Scarborough Research, *2009 Los Angeles Scarborough Release 1 Study*.

¹³⁹ *Id.*

¹⁴⁰ See III.C.2., *infra*.

visitors, and four sites had between 10,000 and 19,999 unique visitors.¹⁴¹ The widespread availability and usage of these independent local websites contribute to the diversity of local news and information available in the Los Angeles market and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the Los Angeles media marketplace.

Competition in the Advertising Market. Competition for advertisers in the Los Angeles market is robust, with traditional media – *i.e.*, newspapers, television, and radio stations -- accounting for 47.6% of total media advertising revenues.¹⁴² Alternative media sources, such as direct mail, cable television, and magazines, account for 52.45%, and new media sources, such as online, Internet yellow pages, mobile, and email marketing, account for 7.6%.¹⁴³ In the traditional media marketplace, the combined share for *LA Times* and KTLA-TV is just 20.6%; in the wider advertising marketplace, Tribune's share accounts for just 11.4% of overall media advertising revenues in Los Angeles.¹⁴⁴ This indicates robust competition for advertisers in the Los Angeles DMA and Tribune's relative lack of market power.

3. Chicago.

Chicago is the third-largest DMA in the country, with more than 3.5 million television homes.¹⁴⁵ As detailed in Tribune's WGN Assignment Application,¹⁴⁶ the Chicago media market

¹⁴¹ Further information regarding usage of local independent Internet news sites in the market is appended to the KTLA Assignment Application as Attachment 8.

¹⁴² See Los Angeles BIA Report, at 19.

¹⁴³ *Id.* at 19-20.

¹⁴⁴ *Id.* at 20.

¹⁴⁵ TVB Research Central, Market Track, *US TV Households by Market*, http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp (last visited Jan. 28, 2010) (based on Nielsen Media Research, Inc., Nielsen Station Index (NSI), estimates for the 2009-2010 television season effective September 21, 2009).

is diverse and competitive, with 16 television stations owned by 13 separate owners, 166 radio stations owned by 90 separate owners, and 24 daily newspapers published by 12 different publishers.¹⁴⁷ In Chicago, Tribune publishes the *Chicago Tribune*, owns and operates WGN-TV, a CW Network affiliate ranked fifth in the market,¹⁴⁸ and WGN(AM), which ranks third based on audience share.¹⁴⁹ Tribune also owns and operates CLTV, a 24-hour cable news channel that focuses on local and regional news not available elsewhere.

Television Stations. The Chicago DMA has 16 broadcast television stations (up from 10 in 1975), owned by 13 separate owners.¹⁵⁰ The big-four networks all own stations in Chicago, and both Fox and NBC own duopolies. As in other markets, broadcast television ratings in Chicago are generally in decline, as shown in the chart below and in Attachment 1 hereto.

¹⁴⁶ Application for Consent to Assignment of Broadcast Station Construction Permit or License, BALCDT-20100428AEL, Exhibit 16 (the “WGN Assignment Application”).

¹⁴⁷ See WGN Assignment Application, Attachment 4 (Mark R. Fratrik, Ph. D., BIA Financial Network, *Report on the Chicago, IL Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Stations WGN-TV and WGN(AM)*, at 20-21 (Feb. 26, 2010) (“Chicago BIA Report”).

¹⁴⁸ See Attachment 1.

¹⁴⁹ Ranking is based on Arbitron PPM audience share for winter 2009 for the Chicago, IL FCC Geographic Market, obtained from the BIA/Kelsey Media Access ProTM database as of February 3, 2010.

¹⁵⁰ See Chicago BIA Report, at 20-21; *id.* at Appendix B-1; see also Attachment 1.

Chicago Television Stations With A 1 Share of Greater¹⁵¹

Station	Owner	Current Affiliation	1975	2001	2010
WLS-TV	ABC/Walt Disney	ABC	22	15	13.7
WBBM-TV	CBS	CBS	24	7	6.5
WMAQ-TV	NBC Universal	NBC	26	11	6.9
WFLD	Fox Television Stations	Fox	5	8	4.4
WGN-TV	Tribune	CW	17	9	5.0
WCIU-TV	Weigel Broadcasting	Independent	<1	4	3.0
WGBO	Univision	Univision	NA	4	2.8
WTTW	Window To The World	PBS	3	4	2.2
WPWR	Fox Television Stations	MyNetworkTV	<1	5	1.6
WYCC	City Colleges of Chicago	PBS	<1	1	0.2
WSNS	NBC Universal	Telemundo	3	2	1.4
WCPX	Ion	PAX	NA	2	0.7

The Chicago television market has grown increasingly diverse and competitive since 1975, notwithstanding Tribune's common ownership of the *Chicago Tribune*, WGN(AM), and WGN-TV since long before the NBCO Rule was adopted. A review of the declining audience shares for broadcast television stations in Chicago demonstrates that diversity and competition are robust, and have increased over time:

- In 1975, the top four stations (WMAQ-TV, WBBM-TV, WLS-TV, and WGN-TV) together had an audience share of 89. By May 2001, that share had declined by more than half to 43.2. By May 2010, the collective share of these stations was a 32.1, and WGN-TV's share had decreased to 5.0.¹⁵²
- In 1975, the largest share earned by a television station was 26 (WMAQ-TV); by May 2001, the largest share was just 15.4 (WLS-TV). In May 2010, the largest share earned by a station was even lower at 13.7 (WLS-TV).¹⁵³
- The once-dominant stations have experienced significant declines. In fact, fewer and fewer stations are earning shares of 10 or above: In 1975, four stations earned

¹⁵¹ All ratings are from the Nielsen Station Index for May of the year reported. Ratings and shares are based on 9:00 am -- midnight time period. *See also* Attachment 1.

¹⁵² *See id.*

¹⁵³ *See id.*

more than a 10 share; by May 2001 two stations did so; and by May 2010, only one station did so.¹⁵⁴

There is no reason to expect any change in these trends. These audience share data demonstrate that Tribune's common ownership of media properties has not hindered, and will not harm in the future, the growth of diversity and competition in Chicago, where a large number of alternative outlets are available. As the total number (and historical increase) of media outlets in the market demonstrates, there are many places for WGN-TV's and WGN(AM)'s viewers and listeners to go for alternative sources of entertainment and news.

While audience shares for the once-dominant stations have declined steadily over time, the amount of local news programming has increased and competition is plentiful.¹⁵⁵ As indicated in Tribune's WGN Assignment Application, an excerpt from which is appended hereto in Attachment 2, seven television stations in the Chicago produce some 175 hours of local news each week, with six of these television stations (and five separate television station owners) exceeding 20 hours per week of regularly-scheduled news programming.¹⁵⁶ WGN-TV provides 42 hours of regularly-scheduled local news each week despite the loss of audience share to other stations and non-broadcast news providers.¹⁵⁷

¹⁵⁴ *See id.*

¹⁵⁵ There are also 10 Class A television stations owned by six separate owners in the Chicago DMA, each of which is required under 47 C.F.R. § 73.6002(b)(2) to broadcast an average of at least three hours per week of locally produced programming each quarter. There are six non-Class A low power television stations owned by five separate owners. *See* Chicago BIA Report, at 21; *id.* at Appendix C.

¹⁵⁶ *See* Attachment 2.

¹⁵⁷ *See id.*

In addition to the full-power television stations serving the DMA, there are 27 multicast programming streams available in the market as broadcasters have embraced the opportunity to bring additional programming options to viewers using these digital multicast channels.¹⁵⁸

Multichannel Video Programming Distributors (“MVPDs”). As of November 2009, cable penetration in the Chicago DMA was 62.4%, 26.6% of the households in the DMA subscribed to non-cable MVPDs, and total MVPD penetration was approximately 88%.¹⁵⁹ Both cable and non-cable MVPDs in the Chicago DMA provide local broadcast stations to their subscribers, including, both DirecTV and DISH Network, which offer local-into-local service.¹⁶⁰ Chicago MVPD subscribers that seek news and information programming options are not limited to the local broadcast stations their MVPD provides, however. In addition to national cable news networks such as CNN, MSNBC, and FOX News, multiple local cable networks offer programming of particular interest to local residents. These include the following:

- CLTV, Tribune’s local cable news channel;
- Cable 25, a commercial local origination channel run by the City of Chicago;
- MUTV, the City of Chicago’s municipal television channel;
- Five public access channels administered by CAN TV which air programming focused on public affairs, community events coverage, religious and spiritual programs, an interactive community bulletin board, and a video magazine providing information on community services;

¹⁵⁸ See Chicago BIA Report, at 21 n.29; *id.* at Appendix B-2.

¹⁵⁹ See TVB Research Central, Market Track, *Cable and ADS Penetration by DMA: Chicago, IL*, http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (last visited July 10, 2010) (based on Nielsen Media Research, DMA Household Universe Estimates). Total MVPD penetration values may differ from the sum of cable and alternative penetration values because Nielsen includes households subscribing to both in each category.

¹⁶⁰ See DirecTV, The Guide, <http://www.directv.com/DTVAPP/epg/theGuide.jsp> (last visited July 10, 2010); DISH Network, Programming, <https://customersupport.dishnetwork.com/customernetqual/prepAddress.do> (last visited July 10, 2010). Full listings of the channels offered by DirecTV and DISH Network in Chicago are appended to the WGN Assignment Application as Attachment 5.

- Naperville Community Television, a cable channel focused on issues of specific concern to the Naperville suburb of Chicago;
- Comcast Network 100 Chicago, which offers four locally-produced programs; and
- Comcast SportsNet Chicago, which provides extensive local and regional sports coverage, including professional baseball, basketball, and hockey games and college sports.¹⁶¹

In addition to contributing significant program diversity, cable channels have increasingly taken audience share from Chicago broadcasters. For example, in Chicago:¹⁶²

- Seven cable channels earn a share of 2 or greater, up from the six reported in 2007. TNT (3.3), Comcast SportsNet Chicago (2.6), the Disney Channel (2.5), Nickelodeon (2.5), USA Network (2.5), Fox News Channel (2.2) and ESPN (2.1) all have shares that exceed eight full-power broadcast stations in Chicago, up from the seven reported in 2007.
- Twenty-five cable channels earn at least a 1 share of the household audience in Chicago, up from the twenty-four identified in 2007. These channels include TBS, HGTV, the History Channel, MSNBC, FX, Lifetime, BET, CNN, Comedy Central, Discovery Channel, and Cartoon Network.

Local audience share data demonstrate that MVPDs have significantly reduced the market shares of local broadcast voices, both individually and collectively.

Newspapers and Print Media.¹⁶³ The Chicago newspaper market is similarly characterized by intense competition, with 24 daily newspapers and 172 weekly newspapers in

¹⁶¹ Additional information regarding the local cable channels available in the Chicago DMA is reflected in Attachment 6 to the WGN Assignment Application.

¹⁶² The discussion below is based on 9 am-midnight shares during the May 2009 sweeps period, as reported by Nielsen.

¹⁶³ Circulation data included in this section were obtained from several sources. The 2009 daily circulation figures for *The Daily Journal* and the *News-Tribune* were obtained from the BIA/Kelsey Media Access ProTM Database, Chicago, IL Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for daily circulation reported therein as of February 3, 2010. The 2009 daily circulation data for all other daily newspapers discussed in this section are based on information from the Audit Bureau of Circulations for the six-month period ending March 29, 2009 and are current as of October 3, 2009. The 2009 daily circulation figures for the *Chicago Tribune*, *Chicago Sun-Times*, *Daily Herald*, *The Times* (Munster, IL), *Post-Tribune*, *The SouthtownStar*, *The Herald News*, *The Beacon News*, *Lake County News-Sun*, *Naperville Sun*, *The Courier News*, and *Kane County Chronicle* represent Monday – Friday (5 Day) circulation averages. The 2009 daily circulation

Chicago and the surrounding suburbs. In addition, on November 20, 2009, The New York Times Company launched a Chicago edition of its newspaper, which includes local and regional news produced by the Chicago News Cooperative.¹⁶⁴ Like other markets, despite substantial population growth, the combined circulation of daily newspapers in Chicago has declined significantly since 1975. Still, the competition between the *Chicago Tribune* and *Sun-Times* in Chicago remains robust, and the *Daily Herald* also attracts significant readership. As submitted in Tribune's WGN Assignment Application, circulation figures for the top daily newspapers are as follows:

Top Daily Newspapers	1975 Circulation	2001 Circulation	2009 Circulation
<i>Chicago Tribune</i>	806,083	675,847	501,202
<i>Chicago Sun-Times</i>	567,780	480,920	312,141
<i>Daily Herald</i>	11,717	148,375	130,404
Combined Circulation	1,385,580	1,305,142	947,643

Daily circulation at the *Chicago Tribune* is down 25.8% since 2001 and 37.8% since 1975.

Combined circulation at the top two newspapers declined 29.7% since 2001 and 40.8% since 1975.

In addition to *Chicago Tribune*, 23 other daily newspapers serve the Chicago DMA, with at least 10 additional publishers represented in the market.¹⁶⁵ These newspapers include:

- The *Chicago Sun Times*, with a daily circulation of 312,141; The *Daily Herald*, with a daily circulation of 130,404; *The Times* (Munster, IL), with a daily circulation of 85,297; and the *Post-Tribune*, with a circulation of 55,767.

figures for the *Northwest Herald* and *The Times* (Ottawa, IL) represent Monday – Saturday (6 Day) circulation averages. Circulation data for the weekly newspapers discussed in this section were obtained from the BIA/Kelsey Media Access Pro™ Database, Chicago, IL Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for total circulation reported therein as of February 4, 2010.

¹⁶⁴ See Richard Pérez-Peña, *Chicago News Venture to Sell Content to New York Times*, NY TIMES, available at http://www.nytimes.com/2009/10/23/business/media/23chicago.html?_r=1 (Oct. 23, 2009).

¹⁶⁵ See Chicago BIA Report, at 21; *id.* at Appendix D.

- Eleven newspapers with daily circulations between 10,000 and 50,000, including *The SouthtownStar* (39,233), *The Herald News* (37,355), the *Northwest Herald* (34,763), *The Daily Journal* (28,600), *The Beacon News* (26,808), the *News-Tribune* (17,400), the *Lake County News-Sun* (16,814), *The Times* (Ottawa, IL) (16,311), the *Naperville Sun* (15,509), *The Courier-News* (11,133), and the *Kane County Chronicle* (11,032).

Though not local, *The New York Times* recently partnered with the Chicago News Cooperative, an independent Internet-only local news website, to provide localized content in the Chicago market. Through this partnership, the Chicago News Cooperative provides pages of local news for a Chicago edition of *The New York Times*, which is distributed twice a week.¹⁶⁶

In addition at least 172 weekly newspapers published by 50 different owners are currently distributed in the DMA.¹⁶⁷ One leading publisher of weeklies is GateHouse Media, Inc., which publishes more than 15 weekly papers in the communities around Chicago.¹⁶⁸

Another strong competitor, publishing more than 20 weekly papers in the area, is Pioneer Press, a member of Sun-Times Media (publisher of the *Chicago Sun-Times*).¹⁶⁹ Many weekly newspapers in the market have substantial circulations, including, for example, *The Lincoln-Way Sun* (210,570), *Crain's Chicago Business* (50,100), *The Bartlett Examiner* (46,000), *The Coal City Courant* (42,000), *Chicago's Northwest Side Press* (40,000), and *The Enterprise* (37,100).

In addition to these daily and weekly newspapers, there is a wide variety of other print media that deliver local information to Chicagoans. These include 65 specialty newspapers

¹⁶⁶ Richard Pérez-Peña, *Chicago News Venture to Sell Content to New York Times*, NY TIMES, available at http://www.nytimes.com/2009/10/23/business/media/23chicago.html?_r=1 (Oct. 23, 2009). Phil Rosenthal, *Tower Ticker, Wall Street Journal Said to Be Weighing Chicago Edition*, CHICAGO TRIBUNE, available at <http://newsblogs.chicagotribune.com/towerticker/2009/11/wall-street-journal-reportedly-weighing-chicago-edition.html#more> (Nov. 20, 2009).

¹⁶⁷ See *id.* This chart notes the weekly newspapers that Tribune owns.

¹⁶⁸ See *id.* at Appendix D.

¹⁶⁹ See *id.*

serving diverse interests, 27 shopper publications, 14 college newspapers, and 49 local magazines.¹⁷⁰

Terrestrial and Satellite Radio Services. The Chicago DMA has 166 commercial and non-commercial AM and FM radio stations, owned by 90 separate entities with the following characteristics:¹⁷¹

- 32 radio stations, operated by 25 different broadcasters, offer news, talk, sports, and information formats;
- 27 radio stations, operated by 20 different broadcasters offer educational and religious formats;¹⁷²
- Thirteen stations operated by seven different broadcasters offer Spanish-language or other ethnic formats;
- 92 stations offer a variety of music formats; and
- one station offers a children's format.¹⁷³

Chicago's radio broadcasters offer programming on 23 HD multicast streams,¹⁷⁴ and six independently owned low power FM stations.¹⁷⁵ Finally, in addition to terrestrial radio, XM Sirius offers satellite radio programming on a subscription basis to Chicago residents, with more

¹⁷⁰ See *id.* at 21; *id.* at Appendix D. Several of these publications are owned by Tribune.

¹⁷¹ See *id.* at 21; *id.* at Appendix E-1. In the more limited radio geographic market as defined by the local radio ownership rule as revised in the 2003 *Order*, there are 134 radio stations owned by 76 different owners. See *id.* at 21.

¹⁷² See *id.* at Appendix E-1.

¹⁷³ See *id.*

¹⁷⁴ See *id.* at 21 n.29; *id.* at Appendix E-2.

¹⁷⁵ See *id.* at 21; *id.* at Appendix F. Each LPFM must be locally owned by an entity that does not hold attributable interests in any other media, 47 C.F.R. §§ 73.853(b), 73.860.

than 200 channels, including numerous talk and information channels, multiple local traffic and weather channels, and many music channels.¹⁷⁶

Local Internet & New Media Sources. A recent Scarborough survey on Internet usage revealed that nearly 69% of Chicagoans access the Internet at home, 36% do so at work, and 11.7% do so in other places (*e.g.*, public libraries).¹⁷⁷ Most respondents indicated that they have broadband connections at home, with 38.9% reporting a DSL connection and 25.8% reporting a cable modem connection.¹⁷⁸

Consistent with national trends, Chicagoans are increasingly accessing Internet sources to obtain news, information and entertainment.¹⁷⁹ In addition to national and international online news sources for local and non-local news and information, a wide variety of local news and information sites provide content on a broad range of topics to the Chicago market.

Usage of *independent* local news and information sites is extensive in the Chicago market. For example, as indicated in Tribune's WGN Assignment Application, between January and December of 2009, www.chicagoist.com, which focuses on Chicago news, food, art, and events, had 948,523 unique visitors and 1,346,276 total visits. Three other independent Chicago-oriented sites had more than 150,000 unique visitors, 15 had between 20,000 and 99,999 unique visitors, and a substantial number of additional such sites had between 10,000 and 19,999 unique visitors.¹⁸⁰ The widespread availability and usage of these independent local websites contribute

¹⁷⁶ See XM-Sirius Channel Lineup (Attachment 7 to the WGN Assignment Application).

¹⁷⁷ Scarborough Research, *2009 Chicago Scarborough Release 1 Study*.

¹⁷⁸ *Id.*

¹⁷⁹ See III.C.2., *infra*.

¹⁸⁰ Further information regarding usage of local independent Internet news sites in the market, including the site operated by the Chicago News Cooperative, is appended to the WGN Assignment Application as Attachment 8.

to the diversity of local news and information available in the Chicago market and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the Chicago media marketplace.

Competition in the Advertising Market. Competition for advertisers in the Chicago market is robust, with traditional media – *i.e.*, newspapers, television, and radio stations -- accounting for 45.8% of total media advertising revenues.¹⁸¹ Alternative media sources, such as direct mail, cable television, and magazines, account for 54.2%, and new media sources, such as online, Internet yellow pages, mobile, and email marketing, account for 7.4%.¹⁸² In the traditional media marketplace, the combined share for WGN-TV/WGN(AM)/*Chicago Tribune* is 28.6%;¹⁸³ in the wider advertising marketplace, Tribune’s share accounts for just 13.1% of overall media advertising revenues in Chicago.¹⁸⁴ This indicates robust competition for advertisers in the Chicago DMA and Tribune’s relative lack of market power.

4. South Florida.

Miami-Fort Lauderdale is the seventeenth-largest DMA in the country, with more than 1.5 million television homes.¹⁸⁵ As detailed in Tribune’s WSFL Assignment Application,¹⁸⁶ the Miami-Fort Lauderdale media market is diverse and competitive, with 15 television stations

¹⁸¹ See Chicago BIA Report at 20.

¹⁸² *Id.*

¹⁸³ *Id.* at 20.

¹⁸⁴ *Id.* at 20.

¹⁸⁵ TVB Research Central, Market Track, *US TV Households by Market*, http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp (last visited Feb. 2, 2010) (based on Nielsen Media Research, Inc., Nielsen Station Index (NSI), estimates for the 2009-2010 television season effective September 21, 2009).

¹⁸⁶ See Application for Consent to Assignment of Broadcast Station Construction Permit or License, BALCDT-20100428ADY, Attachment 16 (the “WSFL-TV Assignment Application”).

owned by 12 owners, 79 radio stations owned by 41 owners, and three daily newspapers published by three different publishers.¹⁸⁷ In South Florida, Tribune publishes the *Sun Sentinel* and owns and operates Station WSFL-TV, Miami, a CW Network affiliate currently ranked eighth in the market.¹⁸⁸

Television Stations. The Miami-Fort Lauderdale DMA has 15 full-power broadcast television stations (up from nine in 1975), owned by 12 separate owners.¹⁸⁹ Two of the big-four networks own stations in Miami-Ft. Lauderdale, and both NBC Universal and CBS own duopolies.

As in other markets, broadcast television ratings in Miami-Fort Lauderdale are generally in decline, as shown in the chart below and in Attachment 1 hereto.

¹⁸⁷ See Miami Waiver at Attachment 4 (Mark R. Fratrik, Ph. D., BIA Financial Network, *Report on the Miami-Ft. Lauderdale, FL Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Television Station WSFL-TV*, at 21-22 (Feb. 26, 2010) (“Miami BIA Report”)).

¹⁸⁸ See Attachment 1.

¹⁸⁹ See Miami BIA Report, at 21; *id.* at Appendix B-1; see also Attachment 1.

Miami-Ft. Lauderdale Television Stations With A 1 Share of Greater¹⁹⁰

Station	Owner	Current Affiliation	1975	2001	2010
WFOR	CBS	CBS	35	9	5.8
WPLG	Post-Newsweek	ABC	21	10	6.9
WSVN	Sunbeam Television Corp.	FOX	31	8	6.2
WLTW	Univision	Univision	2	11	7.2
WSCV	NBC Universal	Telemundo	<1	7	4.8
WTVJ	NBC Universal	NBC	9	9	4.1
WAMI	Univision	Telefutura	NA	2	4.0
WSFL	Tribune	CW	NA	5	2.5
WJAN ¹⁹¹	Sherjan Broadcasting	Independent	NA	0.5	2.3
WSBS	Spanish Broadcasting System, Inc.	Independent	NA	NA	1.2
WBFS	CBS	MyNetworkTV	NA	6	1.3
WPBT	Community TV Foundation	PBS	2	2	0.7
WLRN	Dade County Public Schools	PBS	<1	1	0.6
WPXM	Ion	ION	NA	1	0.5
WGEN	Mapale, LLC	Independent	NA	NA	0.4
WHFT	Trinity Broadcasting	TBN	<1	1	0.3

The Miami-Fort Lauderdale television market has grown increasingly diverse and competitive since 1975, notwithstanding Tribune's common ownership of WSFL-TV and the *Sun Sentinel* for more than a decade. A review of the declining audience shares for broadcast television stations in Miami-Fort Lauderdale demonstrates that diversity and competition are robust, and have increased over time:

- In 1975, the top three stations (WFOR-TV, WSVN-TV, and WPLG-TV) together had an audience share of 87, and by 2001, the collective share of the top three stations (WLTW-TV, WFOR-TV, and WPLG-TV) had declined by nearly two-thirds to 30.8.¹⁹²

¹⁹⁰ All ratings are from the Nielsen Station Index for May of the year reported. Ratings and shares are based on 9:00 am -- midnight time period. *See also* Attachment 1.

¹⁹¹ WJAN is authorized by the FCC as a Class A station.

¹⁹² *See* 2006 Tribune Comments at 65.

- By May 2010, the collective share of the top three stations (WLTW-TV, WSVN-TV, and WPLG-TV) was a mere 20.3, and WSFL-TV's share had decreased from 5.4 in 2001 to just 2.5.¹⁹³
- In 1975, the largest share earned by a television station was 35 (WFOR-TV); by May 2001, the largest share was just 11.3 (WLTW-TV); and by May 2010, the largest share earned by a station was even lower at just 7.2 (WLTW-TV). WSFL-TV's share in May 2010 was only 2.5.¹⁹⁴

There is no reason to expect any change in these trends. These audience share data demonstrate that common ownership of media properties by Tribune has not hindered, and will not harm in the future, the growth of diversity and competition in the Miami-Fort Lauderdale area, where a large number of alternative outlets are available. Nor has common ownership vested in WSFL-TV a discernable competitive advantage in viewership. As the total number (and historical increase) of media outlets in the market demonstrates, there are many places for WSFL-TV's viewers to go for alternative sources of entertainment and news.

While audience shares for the once-dominant stations have declined steadily over time, the amount of local news programming has increased and competition is plentiful.¹⁹⁵ As indicated in Tribune's WSFL Assignment Application, an excerpt from which is appended hereto in Attachment 2, ten stations in the Miami-Fort Lauderdale DMA together broadcast more than 208 hours of local news programming each week.¹⁹⁶ WSFL-TV currently provides 20 hours of news programming per week despite the loss of audience share to other stations and non-broadcast news providers.

¹⁹³ See Attachment 1.

¹⁹⁴ See *id.*

¹⁹⁵ There are also seven Class A television stations owned by six separate owners in the Miami-Fort Lauderdale DMA, each of which is required under 47 C.F.R. § 73.6002(b)(2) to broadcast an average of at least three hours per week of locally produced programming each quarter. There are 28 non-Class A low power television stations owned by 19 separate owners. See Miami BIA Report, at 21; *id.* at Appendix C.

¹⁹⁶ See Attachment 2.

In addition to the full-power television stations serving the Miami-Fort Lauderdale DMA, there are now 14 multicast programming streams available in the market, reflecting the continuing efforts of broadcasters to serve the diverse needs of viewers and the interests of niche markets in a digital multicast channel format.¹⁹⁷

Multichannel Video Programming Distributors (“MVPDs”). As of November 2009, cable penetration in the Miami-Ft. Lauderdale DMA was 66.5%, 29.9% of the households in the DMA subscribed to non-cable MVPDs, and total MVPD penetration was approximately 94.4%.¹⁹⁸ Both cable and non-cable MVPDs in the Miami-Fort Lauderdale DMA provide local broadcast stations to their subscribers, including both DirecTV and DISH Network, which offer local-into-local service.¹⁹⁹ Miami-Ft. Lauderdale DMA MVPD subscribers that seek news and information programming options are not limited to the local broadcast stations their MVPD provides, however. In addition to cable news networks such as CNN, MSNBC, and FOX News, multiple local cable networks offer programming of particular interest to local residents. These include the following:

- Telemiami, a local Spanish-language cable news and entertainment channel which reaches more than 1.5 million cable viewers in Dade and Broward Counties;
- Miami Latin TV, a local Spanish-language news, information, and entertainment channel;

¹⁹⁷ See Miami BIA Report, at 21 n.29; *id.* at Appendix B-2.

¹⁹⁸ See TVB Research Central, Market Track, *Cable and ADS Penetration by DMA: Miami-Ft. Lauderdale*, http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (last visited Feb. 10, 2010) (based on Nielsen Media Research, DMA Household Universe Estimates). Total MVPD penetration values may differ from the sum of cable and alternative penetration values because Nielsen includes households subscribing to both in each category.

¹⁹⁹ See DirecTV, The Guide, <http://www.directv.com/DTVAPP/epg/theGuide.jsp> (last visited Feb. 10, 2010); DISH Network, Programming, <https://customersupport.dishnetwork.com/customernetqual/prepAddress.do> (last visited Feb. 10, 2010). Full listings of the channels offered by DirecTV and DISH Network in Miami are appended to the WSFL Assignment Application as Attachment 5.

- Miami Dade College Television and UMTV (the latter of which is owned and operated by the University of Miami's School of Communication), both of which include original student programming;
- Coral Springs City TV, which provides government information and local programming related to Coral Springs, a suburb in the Miami-Ft. Lauderdale area;
- Three additional channels – Plum TV, The Beach Channel, and Town Talk TV – which provide a variety of local information as well as local advertising;
- SunSports and Fox SportsNet Florida, which provide extensive local and regional sports coverage, including major and minor league professional sports, college sports, and coverage of all Florida state high school sports championships, with SunSports also providing local and regional public affairs programming focused on Florida government and politics.²⁰⁰

In addition to contributing significant program diversity, cable channels have increasingly taken audience share from South Florida broadcasters. For example, in Miami-Ft. Lauderdale.²⁰¹

- In May 2009, six cable channels (TNT, Disney Channel, Nickelodeon, ESPN, USA Network, and the Cartoon Network) ranked among the top-15 channels viewed in the market, and another three (Fox News Channel, Fox Sports Florida, and TBS) made the top-20.
- In May 2009, 10 broadcast and 22 cable channels earned a share of 1 or greater, compared to 12 broadcast and 17 cable channels that had earned a share of 1 or greater in May 2006.
- The 22 cable channels earning a 1 audience share or greater in 2009 outranked five broadcast stations in the Miami DMA.
- In addition to 22 cable channels earning a 1 share or greater, 99 other cable channels earned a share of 0.1 or greater in the Miami DMA in May 2009, including the Family Channel, HGTV, MSNBC, Bravo, the National Geographic Channel, TV1, BBC America, and Logo.

²⁰⁰ Additional information regarding the local cable channels available in the Miami-Ft. Lauderdale DMA is reflected in Attachment 6 to the WSFL Assignment Application.

²⁰¹ The discussion below is based on 9 a.m. – midnight shares during the May 2009 sweeps period, as reported by Nielsen.

Local audience share data demonstrate that competition from the variety of program options offered by MVPDs has significantly reduced the market shares of local broadcast voices, both individually and collectively.

Newspapers and Print Media.²⁰² The Miami-Fort Lauderdale newspaper market is similarly characterized by intense competition, with three daily newspapers and 36 weekly newspapers published in the Miami-Fort Lauderdale area and the surrounding suburbs. Like other markets, despite substantial population growth, the combined circulation of daily newspapers in Miami-Fort Lauderdale has declined significantly in recent years. Still, the *Sun Sentinel* and *The Miami Herald* compete for sizable readership. As submitted in Tribune's WSFL Assignment Application, circulation figures are as follows:

Top Daily Newspapers	1975 Circulation	2001 Circulation	2009 Circulation
<i>Sun Sentinel</i>	96,616	236,095	195,522
<i>The Miami Herald</i>	375,745	300,377	202,122
Combined Circulation	472,361	536,472	397,644

Daily circulation at the *Sun Sentinel* is down 17.4% since 2001, and combined circulation at these top two newspapers declined 25.9% since 2001. Moreover, in addition to these two dailies, *El Nuevo Herald* and *Diario Las Americas* – specialty newspapers serving the significant local Spanish-speaking population – and *The Key West Citizen* serve the Miami-Ft. Lauderdale DMA with daily circulations of 71,318, 69,132, and 9,522, respectively.

²⁰² Circulation data included in this section were obtained from several sources. The 2009 daily circulation data for daily newspapers discussed in this section are based on information from the Audit Bureau of Circulations for the six-month period ending March 29, 2009, and are current as of October 3, 2009. The 2009 daily circulation figures for the *Sun Sentinel*, *The Miami Herald*, and *El Nuevo Herald* represent Monday – Friday (5 Day) circulation averages. The 2009 daily circulation figure for *The Key West Citizen* represents a Monday – Saturday (6 Day) circulation average. The circulation data for the weekly newspapers discussed in this section were obtained from the BIA/Kelsey Media Access ProTM Database, Miami-Ft. Lauderdale, FL Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for total circulation reported therein as of February 4, 2010.

In addition to English and Spanish-language daily newspapers, a number of weekly newspapers contribute to the diversity and competition in the Miami-Ft. Lauderdale newspaper market: at least 36 weekly newspapers published by 15 different owners are currently distributed in the DMA.²⁰³ Many weekly newspapers in the market have substantial circulations, including, for example, the *Coral Springs Forum* (37,635), *Miami Today* (33,000), the *Deerfield Beach-Lighthouse Point Observer* (30,000), and the *Broward Informer* (22,000).

In addition to these daily and weekly newspapers, there is a wide variety of other print media that deliver local information to residents of the Miami-Ft. Lauderdale area. These include 31 specialty newspapers serving diverse interests including *El Nuevo Herald* and *Diario Las Americas* noted above; three shopper publications; three college newspapers; and 27 local magazines.²⁰⁴

Terrestrial and Satellite Radio Services. The Miami-Ft. Lauderdale DMA has 79 commercial and non-commercial AM and FM radio stations owned by 41 separate entities with the following characteristics:²⁰⁵

- 13 radio stations operated by 10 different broadcasters offer news, sports, talk and information formats;
- Eight stations operated by eight different broadcasters offer educational and religious formats;²⁰⁶
- In addition, 22 stations operated by 16 different broadcasters, offer Spanish-language or other ethnic formats;²⁰⁷ and

²⁰³ See Miami BIA Report, at 22; *id.* at Appendix D.

²⁰⁴ See *id.* Several of these publications are owned by Tribune.

²⁰⁵ See *id.* at 21-22; *id.* at Appendix E. In the more limited radio geographic market as defined by the local radio ownership rule as revised in the 2003 Order, there are 58 radio stations owned by 31 different owners. See *id.* at 22.

²⁰⁶ See *id.* at Appendix E.

- 34 stations offer a variety of music formats, and three stations offer a children's or family format.²⁰⁸

Miami-Fort Lauderdale radio broadcasters offer programming on 11 HD multicast streams,²⁰⁹ and there are three independently owned low power FM stations.²¹⁰ Finally, in addition to terrestrial radio, XM Sirius offers satellite radio programming on a subscription basis to Miami-Fort Lauderdale residents, with more than 200 channels, including numerous talk and information channels, multiple local traffic and weather channels and many music channels.²¹¹

Local Internet & New Media Sources. A recent Scarborough survey on Internet usage revealed that nearly 65.5% of South Florida residents access the Internet at home, 30.1% do so at work, and 9.8% do so in other places (*e.g.*, public libraries).²¹² Most respondents indicated that they have broadband connections at home, with 48.3% reporting a DSL connection and 17.7% reporting a cable modem connection.²¹³

Consistent with national trends, Miami-Fort Lauderdale residents are increasingly accessing Internet sources to obtain news, information and entertainment.²¹⁴ In addition to national and international online news sources for local and non-local news and information, a

²⁰⁷ *See id.*

²⁰⁸ *See id.*

²⁰⁹ *See id.* at 22; *id.* at Appendix E.

²¹⁰ *See id.* at 22; *id.* at Appendix F. Each LPFM must be locally owned by an entity that does not hold attributable interests in any other media; 47 C.F.R. §§ 73.853(b), 73.860.

²¹¹ *See* XM-Sirius Channel Lineup (Attachment 7 to WSFL Assignment Application).

²¹² Scarborough Research, 2009 *Miami/West Palm Beach Combined Scarborough Release I Study*.

²¹³ *Id.*

²¹⁴ *See* III.C.2., *infra*.

wide variety of local news and information sites provide content on a broad range of topics to the South Florida market.

Usage of *independent* local news and information sites is extensive in the South Florida market. For example, as indicated in Tribune's WSFL Assignment Application, between January and December of 2009, www.coconutgrovegrapevine.blogspot.com, which focuses on news, art, and events in the Coconut Grove neighborhood and surrounding Miami-Ft. Lauderdale area, had 75,679 unique visitors and 263,633 total visits. Eight other independent Miami-Ft. Lauderdale-oriented sites had more than 30,000 unique visitors and 11 had between 5,000 and 29,999 unique visitors.²¹⁵ The widespread availability and usage of these independent local websites contribute to the diversity of local news and information available in the Miami-Fort Lauderdale market and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the Miami-Fort Lauderdale media marketplace.

Competition in the Advertising Market. Competition for advertisers in the Miami-Fort Lauderdale market is robust, with traditional media – *i.e.*, newspapers, television, and radio stations -- accounting for 37.1 % of total media advertising revenues.²¹⁶ Alternative media sources, such as direct mail, cable television, and magazines, account for 54.5%, and new media sources, such as online, Internet yellow pages, mobile, and email marketing, account for 7.1%.²¹⁷ In the overall media advertising marketplace, the combined share for WSFL-TV and the *Sun-*

²¹⁵ Further information regarding usage of local independent Internet news sites in the market is appended to the WSFL Assignment Application as Attachment 8.

²¹⁶ See Miami BIA Report, at 20.

²¹⁷ *Id.*

Sentinel is just 8.1%.²¹⁸ This indicates robust competition for advertisers in the Miami-Fort Lauderdale DMA and Tribune's relative lack of market power.

5. Hartford-New Haven.

The Hartford and New Haven, Connecticut DMA (the "Hartford DMA") is ranked 30th in the country, with more than 1 million television homes.²¹⁹ As detailed in Tribune's WTIC-TV Assignment Application,²²⁰ the Hartford media market is diverse and competitive, with 11 television stations owned by seven separate owners, 77 radio stations owned by 45 separate owners, and 12 daily newspapers published by eight different publishers.²²¹ In Hartford, Tribune publishes the *Hartford Courant* (the "*Courant*") and owns and operates WTIC-TV, Hartford and WCCT-TV, Waterbury (formerly WTXS-TV) (Fox and CW Network affiliates, respectively) ranked fourth and fifth, respectively in the market.²²²

Television Stations. The Hartford DMA has 11 broadcast television stations (from 15 in 1975), owned by seven separate owners.²²³ One station is owned by NBC, and two other television groups operate in the Hartford DMA – Meredith Corporation owns the CBS affiliate, and LIN Television owns a duopoly of the ABC and My Network affiliates. Viewers in the Hartford DMA also have access to

²¹⁸ *Id.* at 21.

²¹⁹ TVB Research Central, Market Track, *US TV Households by Market*, http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp (last visited Feb. 2, 2010) (based on Nielsen Media Research, Inc., Nielsen Station Index (NSI), estimates for the 2009-2010 television season effective September 21, 2009).

²²⁰ See Application for Consent to Assignment of Broadcast Station Construction Permit or License, BALCDT-20100428ADX, Attachment 16 (the "WTIC-TV Assignment Application").

²²¹ See, generally, WTIC-TV/Assignment Application, Attachment 4 (Mark R. Fratrick, Ph. D., BIA Financial Network, *Report on the Hartford-New Haven, CT Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Television Stations WTIC-TV and WTXS(TV)*, at 22-23 (Feb. 26, 2010) ("Hartford BIA Report").

²²² See Attachment 1.

²²³ See Hartford BIA Report, at 22; *id.* at Appendix B-1; see also Attachment 3 to WTIC-TV Assignment Application.

numerous television stations from adjacent markets as all parts of Connecticut are covered by out-of-market over-the-air signals, including city-grade overlaps from two Springfield, Massachusetts stations. Stations from New York City, Boston, Providence and Albany also cover portions of the state.²²⁴ As in other markets, broadcast television ratings in Hartford are generally in decline, as shown in the chart below.

Hartford Television Stations With A 1 Share of Greater²²⁵

Station	Owner	Current Affiliation	1975	2001	2010
WFSB	Meredith	CBS	34	14	12.0
WTNH-TV	LIN Television Corporation	ABC	23	10	10.1
WTIC-TV	Tribune	FOX	NA	5.1	5.8
WVIT	NBC Universal	NBC	15	13	6.6
WCCT-TV	Tribune	CW	<1	2	1.8
WEDH	Connecticut Public B/casting	PBS	<1	2	1.2
WCTX	LIN Television Corporation	MyNetworkTV	NA	2	1.5
WUVN	Entravision Communications	Univision	NA	0.1	1.2
WHPX	Ion	Independent	NA	0.5	0.6
WEDN	Connecticut Public B/casting	Independent	NA	NA	<<
WEDY	Connecticut Public B/casting	MyNetworkTV	NA	6	<<

The Hartford television market has grown increasingly diverse and competitive since 1975, notwithstanding Tribune's common ownership of WTIC-TV, WCCT-TV, and the

²²⁴ See Attachment 3 for a contour map illustrating out-of-state station contours. During the November 2009 sweeps period, out-of-market stations achieved 6% of all viewing of over-the-air television stations in the Hartford DMA. Share data based on Nielsen ratings for November 2009 (Sunday through Saturday, 9 am-midnight). Further, during that same ratings period, three of the Big-four network television stations from New York that are carried on cable systems serving the Hartford DMA (WNBC(TV), WCBS-TV, and WNYW(TV)) ranked among the top 60 video channels viewed in the market, collectively earning a 1.2 share. Share and ranking data based on Nielsen ratings for May 2009 (9 am-midnight).

²²⁵ All ratings are from the Nielsen Station Index for May of the year reported. Ratings and shares are based on 9:00 am -- midnight time period. See also Attachment 1.

Courant. A review of the declining audience shares for broadcast television stations in Hartford demonstrates that diversity and competition are robust, and have increased over time:

- In 1975, when WFSB earned a 34 share, WTNH earned a 23 share, and WVIT earned a 15 share, no other television station in the DMA earned greater than a 1 share. By May 2010, the greatest share earned by any station in the market was 12.0.²²⁶
- In 1975, WTIC-TV was not yet on the air, and WTXN earned less than a 1 share.²²⁷ By May 2010, under Tribune's common ownership, the Stations increased their shares to a 10.1 and 1.8, respectively, but had not overtaken the two highest-rated stations in the market (WFSB and WTNH), which had shares of 12.0 and 10, respectively.²²⁸
- In May 2001, the combined audience share for all television stations in the Hartford DMA was 51.7; in May 2010, the combined audience share had fallen to 40.8.²²⁹
- In May 2001, the combined audience share for the top four stations in the Hartford DMA (WFSB(TV), WTNH-TV, WVIT(TV), and WTIC-TV) was 43.6. In May 2010, the combined audience share was 34.5 – a decline of approximately 20.5%.²³⁰

There is no reason to expect any change in these trends. These audience share data demonstrate that Tribune's common ownership of media properties has not hindered, and will not harm in the future, the growth of diversity and competition in the Hartford DMA, where a large number of alternative outlets are available. Nor has common ownership vested in WTIC-TV/WCCT-TV a discernable competitive advantage in viewership. As the total number (and historical increase) of media outlets in the market demonstrates, there are many places for WTIC-TV/WCCT-TV's viewers to go for alternative sources of entertainment and news.

²²⁶ See 2006 Tribune Comments at 73.

²²⁷ See Attachment 1.

²²⁸ See *id.*

²²⁹ See *id.*

²³⁰ See *id.*

While audience shares for the once-dominant stations have declined steadily over time, the amount of local news programming has increased competition is plentiful.²³¹ As indicated in Tribune's WTIC-TV Assignment Application, an excerpt from which is appended hereto in Attachment 2, these stations together broadcast more than 140 hours of local news programming each week. WTIC-TV provides 35.5 hours of regularly scheduled local news each week, up from 6.5 hours per week at the time Tribune acquired the *Courant* in 2000, and despite the loss of audience share to other non-broadcast news providers.²³²

In addition to the full-power television stations serving the DMA, there are 13 multicast programming streams available in the market as broadcasters have embraced the opportunity to bring additional programming options to viewers using these digital multicast channels.²³³

Multichannel Video Programming Distributors ("MVPDs"). As of November 2009, cable penetration in the Hartford DMA was 83.4%, 13.6% of the households in the DMA subscribed to non-cable MVPDs, and total MVPD penetration was nearly 97%, placing the Hartford DMA as tied for the second highest MVPD penetration in the country.²³⁴ Both cable and non-cable MVPDs in the Hartford DMA provide local broadcast stations to their subscribers, including both DirecTV and DISH Network, which offer local-into-local service.²³⁵ Hartford

²³¹ There are three independently owned Class A television stations in the Hartford DMA, each of which is required under 47 C.F.R. § 73.6002(b)(2) to broadcast an average of at least three hours per week of locally produced programming each quarter. There are also three independently owned 23 non-Class A low power television stations. *See* Hartford BIA Report, at 21; *id.* at Appendix C.

²³² *See* Attachment 1.

²³³ *See* Hartford BIA Report, at 22 n.30; *id.* at Appendix B-2.

²³⁴ *See* TVB Research Central, Market Track, *Cable and ADS Penetration by DMA: Hartford and New Haven*, http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (last visited Feb. 10, 2010) (based on Nielsen Media Research, DMA Household Universe Estimates). Total MVPD penetration values may differ from the sum of cable and alternative penetration values because Nielsen includes households subscribing to both in each category.

²³⁵ *See* DirecTV, The Guide, <http://www.directv.com/DTVAPP/epg/theGuide.jsp> (last visited July 10, 2010);

MVPD subscribers that seek news and information programming options are not limited to the local broadcast stations their MVPD provides, however. In addition to national cable news networks such as CNN, MSNBC, and FOX News, multiple local cable networks offer programming of particular interest to local residents. These include the following:

- New England Cable News – a 24-hour regional news channel covering New England;
- News 12 Connecticut – a 24-hour local news channel that covers southwestern Connecticut and offers a separate News12 Traffic and Weather channel;
- Connecticut Network (CT-N), which is produced by the Connecticut Public Affairs Network on behalf of the Connecticut General Assembly and provides Connecticut state government information and programming, including legislative sessions, public hearings, and committee meetings; and
- Three programming channels provided by Hartford Public Access Television that are dedicated to government, educational, and public access programming.

Numerous regional networks deliver sports programming to the Hartford market, including:

- New England Sports Network, owned by the Boston Red Sox and Boston Bruins, which provides extensive local and regional sports coverage;
- YES Network, owned by the New York Yankees, which provides extensive local and regional sports coverage, including exclusive live telecasts of New York Yankees baseball and New Jersey Nets basketball games and minor league and college sports games;
- Comcast SportsNet New England, which provides extensive local and regional sports coverage, including Boston Celtics basketball games and men's and women's college sports; and
- SportsNet New York, established in 2006 by Sterling Entertainment Enterprises, Time Warner Cable, and Comcast, which provides extensive local and regional sports coverage, including exclusive live telecasts of New York Mets baseball games and other professional and collegiate sports.²³⁶

DISH Network, Programming, <https://customersupport.dishnetwork.com/customernetqual/prepAddress.do> (last visited Feb. 10, 2010). Full listings of the channels offered by DirecTV and DISH Network in Hartford are appended to the WTIC-TV Assignment Application as Attachment 5.

²³⁶ Additional information regarding the local cable channels available in the Hartford DMA is reflected in Attachment 6 to the WTIC-TV Assignment Application.

In addition to contributing significant program diversity, cable channels have increasingly taken audience share from Hartford broadcasters. For example, in Hartford:²³⁷

- In May 2009, while eight over-the-air television stations in the market received at least a 1 share, 25 cable networks garnered at least a 1 share.
- Nine cable channels received ratings higher than WTXX, and six cable channels made the list of top 10 channels viewed in the market, earning a 2.5 share or better.
- In addition to the 10 cable networks in the top 15 channels viewed in the market, five other cable channels also make the top 20, earning a 1.4 share or better.
- Of the top 20 channels viewed in the Hartford DMA, five are cable channels that provide news or sports programming, much of it local in the market. These news and sports channels include the New England Sports Network, Fox News Channel, the YES Network, CNN, and ESPN.

Local audience share data demonstrate that competition from the variety of program options offered by MVPDs has significantly reduced the market shares of local broadcast voices, both individually and collectively.

Newspapers and Print Media.²³⁸ The Hartford newspaper market is similarly characterized by intense competition, with 12 daily newspapers, with eight independent publishers.²³⁹ Like other markets, despite substantial population growth, the combined

²³⁷ The discussion below is based on 9 am-midnight share values during the May 2009 sweeps period, as reported by Nielsen.

²³⁸ Circulation data included in this section were obtained from several sources. The 2009 daily circulation figures for the *Record-Journal* and *The Chronicle* were obtained from the BIA/Kelsey Media Access ProTM Database, Hartford-New Haven, CT Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for daily circulation reported therein as of February 3, 2010. The 2009 daily circulation data for all other daily newspapers discussed in this section are based on information from the Audit Bureau of Circulations for the six-month period ending March 29, 2009, and are current as of October 3, 2009. The 2009 daily circulation figures for the *Courant*, the *Journal-Inquirer*, the *New Haven Register*, *The Day*, the *Norwich Bulletin*, *The Register Citizen*, and the *Republican-American/Sunday Republican* represent Monday – Friday (5 Day) circulation averages. The 2009 daily circulation figures for *The Bristol Press/The Herald Press*, *The Middletown Press/The Herald Press*, and *The Herald/The Herald Press* represent Monday – Saturday (6 Day) circulation averages. Circulation data for the weekly newspapers discussed in this section were obtained from the BIA/Kelsey Media Access ProTM Database, Hartford-New Haven, CT Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for total circulation reported therein as of February 4, 2010.

²³⁹ See Hartford BIA Report, at 23; *id.* at Appendix D.

circulation of daily newspapers in the Hartford market has declined significantly in recent years. Tribune's *Courant* faces competition from all of the daily newspapers in the Hartford DMA, and most notably from the *New Haven Register* and the (Waterbury, CT) *Republican-American/Sunday Republican*. As submitted in Tribune's WTIC-TV Assignment Application, circulation figures are as follows:

Top Daily Newspapers	2006	2009
<i>Hartford Courant</i>	184,254	155,540
<i>New Haven Register</i>	84,546	73,877
<i>Republican-American/Sunday Republican</i>	61,100	49,723
Combined circulation	329,900	279,140

From September 2001 to May 2006, the daily circulation of the *Courant* fell approximately 7.2% from 198,651 to 184,254. As the chart above shows, between 2006 and 2009, the *Courant's* daily circulation further decreased to 155,540 – a decline of approximately 15.6% (and a decline of approximately 21.7% from September 2001). Between 2006 and 2009, daily circulation for the *New Haven Register* and the *Republican-American/Sunday Republican* declined approximately 12.6% and 18.6%, respectively, and the combined circulation of the top three newspapers declined approximately 15.4%. Notwithstanding these declines in circulation, competition among these newspapers remains strong.

In addition to these three dailies, nine other daily newspapers serve the Hartford DMA, with at least five additional publishers represented in the market.²⁴⁰ These newspapers include:

- Four newspapers with daily circulations above 20,000, including the *Journal Inquirer* (35,252), *The Day* (30,895), the *Norwich Bulletin* (21,476), and the *Record-Journal* (21,200).
- One newspaper – *The Chronicle* – with circulation of 8,800.

²⁴⁰

See id.

- Four dailies published by the Journal Register Company, which also publishes the *New Haven Register*: *The Herald/The Herald Press* (9,646); *The Bristol Press/The Herald Press* (7,933); *The Register Citizen* (7,876); and *The Middletown Press/The Herald Press* (6,230).

In addition, at least 53 general interest weekly newspapers published by at least 15 different owners are currently distributed in the DMA.²⁴¹ The Journal Register Company is a leader in the weekly newspaper arena, publishing at least 17 weekly newspapers in communities around Hartford and New Haven.²⁴² Many weekly newspapers in the Hartford market have substantial circulations, including, for example, *The Reminder* (230,000), *The Middletown Press* (35,000), and *Voices/Sunday – The Weekly Star* (30,000). In addition to these daily and weekly newspapers, there is a wide variety of other print media that deliver local information to residents of the Hartford DMA. These include 12 specialty newspapers serving diverse interests, 15 shopper publications, eight college newspapers, and 17 local magazines.²⁴³

Terrestrial and Satellite Radio Services. The Hartford DMA has 77 commercial and non-commercial AM and FM radio stations owned by 45 entities with the following characteristics:²⁴⁴

- 14 radio stations operated by seven different broadcasters offer news, talk, sports, and information formats;
- three offer educational and religious formats;²⁴⁵
- Four independently owned stations offer Spanish-language or other ethnic formats;

²⁴¹ See *id.* This chart notes the several weekly newspapers Tribune owns.

²⁴² See *id.*

²⁴³ See *id.* Several of these publications are owned by Tribune.

²⁴⁴ See Hartford BIA Report at 21; *id.* at Appendix E. In the more limited radio geographic market as defined by the local radio ownership rule as revised in the 2003 Order, there are 93 full-power radio stations owned by 45 companies. See *id.* at 21.

²⁴⁵ See *id.* at Appendix E.

- 54 stations offer a variety of music formats; and
- and one station offers a children's format.²⁴⁶

Hartford radio broadcasters offer programming on 11 HD multicast streams,²⁴⁷ and there are two independently owned low power FM stations, each of which by definition must be locally owned by an entity that does not hold attributable interests in any other media.²⁴⁸ Finally, in addition to terrestrial radio, XM Sirius offers satellite radio programming on a subscription basis to Hartford residents, with more than 200 channels, including numerous talk and information channels, multiple local traffic and weather channels, and many music channels.²⁴⁹

Local Internet & New Media Sources. A recent Scarborough survey on Internet usage revealed that nearly 69% of Hartford residents access the Internet at home, 34.3% do so at work, and 9.7% do so in other places (*e.g.*, public libraries).²⁵⁰ Most respondents indicated that they have broadband connections at home, with 35.7% reporting a DSL connection and 34.2% reporting a cable modem connection.²⁵¹

Consistent with national trends, Hartford residents are increasingly accessing Internet sources to obtain news, information and entertainment.²⁵² In addition to national and international online news sources for local and non-local news and information, a wide variety of

²⁴⁶ *See id.*

²⁴⁷ *See id.* at 22 n.31; *id.* at Appendix E.

²⁴⁸ *See id.* at 22; *id.* at Appendix F; 47 C.F.R. §§ 73.853(b), 73.860.

²⁴⁹ *See* Sirius Channel Lineup (Attachment 7 to the WTIC-TV Assignment Application).

²⁵⁰ Scarborough Research, 2009Hartford Scarborough Release 1 Study.

²⁵¹ *Id.*

²⁵² *See* III.C.2., *infra*.

local news and information sites provide content on a broad range of topics to the Hartford market.

Usage of *independent* local news and information sites is extensive in the Hartford market. As indicated in Tribune's WTIC-TV Assignment Application, between January and December of 2009, www.westportnow.com had 212,108 unique visitors and 915,618 total visits. During the same time period, www.newhavenindependent.org had 340,433 unique visitors and 692,773 total visits. These websites provide wide-ranging local news and information content. In addition to these sites, one independent site had more than 100,000 unique visitors and more than 150,000 total visits. Seven other Hartford-oriented sites had between 20,000 and 99,999 unique visitors, and seven more sites had between 10,000 and 19,999 unique visitors.²⁵³ The widespread availability and usage of these independent local websites contribute to the diversity of local news and information available in the Hartford market and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the Hartford media marketplace.

Competition in the Advertising Market. Competition for advertisers in the Hartford-New Haven market is robust, with traditional media – *i.e.*, newspapers, television, and radio stations -- accounting for 47.3% of total media advertising revenues.²⁵⁴ Alternative media sources, such as direct mail, cable television, and magazines, account for 52.7%,²⁵⁵ and new media sources, such as online, Internet yellow pages, mobile, and email marketing, account for 6.8%.²⁵⁶ In the

²⁵³ Further information regarding usage of local independent Internet news sites in the market is appended to the WTIC-TV Assignment Application as Attachment 8.

²⁵⁴ See Hartford BIA Report, at 19.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 21.

overall media advertising marketplace, the combined share for WTIC-TV, WCCT-TV and the *Hartford Courant* is just 12.7%.²⁵⁷ This indicates robust competition for advertisers in the Miami-Fort Lauderdale DMA and Tribune's relative lack of market power.

C. The Internet Has Revolutionized Access to News and Information and Added Competition That Renders the NBCO Rule Obsolete.

In the NOI, the Commission recognizes the tremendous impact the Internet has had on the public's access to news and information and the competition it brings to "traditional media," appropriately noting that "[o]ur review must take account of the Internet's role and significance."²⁵⁸ The Internet has displaced the public's reliance on "traditional media" and transformed the manner in which people access, use, and otherwise consume information. Today, when the public wants instant information about practically anything, the first stop is often the Internet – whether on a computer, phone, or other mobile device. From international to hyper-local, Internet sources provide and interpret news and information, and review of the NBCO Rule must take the seemingly endless number and variety of Internet sources into account.

At the time the NBCO rule was adopted, news was aggregated and distilled solely by a very limited number of sources – local broadcast stations and newspapers. Today, that limitation no longer exists. Tribune submits that the advent and popularity of the Internet and its vast array of content sources render the NBCO Rule totally obsolete.

1. The Internet Is Uniquely Pervasive and Accessible.

The Internet is increasingly available, accessible and therefore, is readily utilized to meet end users' news, information, entertainment and communications needs. Widespread access to

²⁵⁷ *Id.*

²⁵⁸ NOI at para. 11

the Internet (and high-speed Internet), combined with rapid consumer adoption of new technologies has resulted in increased Internet usage. Internet websites are taking on many of the functions long served by traditional media, such as breaking news (Twitter feeds), classified advertising (Craigslist and e-Bay) and “television” viewing/video streaming. Because of its interactivity, it facilitates social interaction and engagement (Facebook and MySpace), as well as conversation and commentary (Foursquare and HotPotato). It is mobile, wireless and everywhere.

The Internet is pervasive: 74% of Americans have Internet access at home²⁵⁹ (up from 60% in 2001),²⁶⁰ and more and more consumers now purchase *high-speed* Internet access. According to recent studies by the FCC, NTIA and the Pew Research Center, between 60 and 67% of U.S. households currently have broadband connectivity.²⁶¹ According to the FCC’s OBI Working Paper No. 1, 65% of adults use broadband at home.²⁶² This represents a substantial increase from prior years: in June 2000 home broadband adoption was only 3%,²⁶³ and in May

²⁵⁹ John B. Horrigan, *Broadband Adoption and Use in America*, Omnibus Broadband Initiative (“OBI”) Working Paper Series No. 1 (Feb. 2010), at 3 (“OBI Working Paper No. 1”), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf (last visited Mar. 8, 2010). The National Telecommunications and Information Administration (“NTIA”) reports a slightly lower figure, finding that 68.7% of households now have access to the Internet. U.S. Department of Commerce, National Telecommunications and Information Administration, *Digital Nation: 21st Century America’s Progress Toward Universal Broadband Internet Access, An NTIA Research Preview* (Feb. 2010), at 4 (“Digital Nation”), *available at* http://www.ntia.doc.gov/reports/2010/NTIA_internet_use_report_Feb2010.pdf (last visited Mar. 8, 2010).

²⁶⁰ The Nielsen Company, *Internet Penetration Reaches 60 Percent in the U.S. According to Nielsen/NetRatings* (Feb. 28, 2001), http://www.nielsen-online.com/pr/pr_010228.pdf (last visited Feb. 5, 2010). More Americans have home Internet connections than subscribe to cable television. *13th Annual Video Competition Report*, 24 FCC Rcd at 627 (¶ 178) (reporting that 68.2% of Americans have cable television).

²⁶¹ See OBI Working Paper No. 1, at 13; see also Digital Nation, at 4, reporting that in October 2009, 63.5% of households had broadband access.

²⁶² See OBI Working Paper No. 1, at 13, citing a survey conducted in October and November 2009;

²⁶³ John B. Horrigan, *The Broadband Difference: How Online Americans’ Behavior Changes With High-Speed Internet Connections at Home*, at 9 (June 23, 2002) (“The Broadband Difference 2002”), http://pewinternet.org/~media/Files/Reports/2002/PIP_Broadband_Report.pdf.pdf (last visited Feb. 5, 2010).

2008 home broadband adoption was 55%.²⁶⁴ As Internet access has become more widespread, time spent on-line has increased from 14 hours per week in 2006 to more than 17 hours per week as of January 2009.²⁶⁵ A recent study conducted by the Joint Center for Political and Economic Studies found this increased usage to extend across all racial and ethnic categories.²⁶⁶

There is no evidence that broadband adoption or usage is slowing. “Broadband adoption appears to have been largely immune to the effects of the current economic recession,” in that “more than twice as many respondents [to a recent survey] said they had cut back or cancelled a cell phone plan or cable TV service than said the same about their Internet service.”²⁶⁷ Indeed, both household use of the Internet and adoption of broadband increased substantially between 2007 and 2009 in each demographic group tracked by NTIA in its Digital Nation report.²⁶⁸

The increasing availability of broadband makes it easy for users to identify and access the amount and type of content they desire; the method by which they receive it (for example, PDA or mobile phone alert, podcast, or streaming video file); and the time or schedule on which they access it. Broadband has fueled the growth and popularity of online news sources and will likely continue to do so. One study attributes approximately one-quarter of the growth of daily online

²⁶⁴ John B. Horrigan, *Home Broadband Adoption 2009*, at 3, 9 (June 17, 2009) (“Home Broadband Adoption 2009”), <http://www.pewinternet.org/~media/Files/Reports/2009/Home-Broadband-Adoption-2009.pdf> (last visited Feb. 4, 2010). These growth figures are supported by those reported by NTIA, which reflect that in August 2000, 4.4% of households had broadband access; by October 2007, that number had grown to 50.8%; and that in October 2009, the household broadband adoption rate stood at 63.5%. Digital Nation, at 4.

²⁶⁵ *PEJ 2009 State of the News Media Report*, Online, Audience, at 15, http://www.stateofthemediamedia.org/2009/printable_online_chapter.htm (last visited Feb. 5, 2010) (citing The Digital Future Report 2009, Center for Digital Future, University of Southern California, Annenberg School Survey).

²⁶⁶ Joint Center for Political and Economic Studies, *National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use*, at 1, 8-9 (Feb. 2010), available at http://www.jointcenter.org/publications_recent_publications/media_and_technology/national_minority_broadband_adoption (last visited Mar. 5, 2010) (“Minority Broadband Adoption”).

²⁶⁷ Home Broadband Adoption 2009, at 4-5.

²⁶⁸ Digital Nation, at 5-9, 11. Racial disparities in broadband adoption continue to narrow as minorities are among the fastest-growing groups of home broadband subscribers. Minority Broadband Adoption, at 1, 14-15.

news consumption between 2002 and 2006 to the rise in residential broadband adoption.²⁶⁹

Internet users with home broadband connections are *twice as likely* to use the Internet as they are newspapers to get political news, and for these users the Internet is “by far the second-most important source of campaign news, behind only television and well ahead of newspapers, radio and magazines.”²⁷⁰

Though not tracked in media consumption surveys until fairly recently, large percentages of Internet users now obtain news online, irrespective of type (national, international, local or community news). According to a Pew Research Center study, by early 2009, 70% of adult Internet users reported getting news online.²⁷¹ In addition, between 2006 and 2008, the number of Americans responding that they read a newspaper online “yesterday” increased from 9% in 2006 to 14% in 2008,²⁷² a figure that most certainly has risen further since 2008. Pew’s Participatory News Consumer study confirms that the Internet’s popularity as a source of news has continued to grow, finding that on a “typical day” 61% of Internet users access news online, while 71% do so “at least occasionally.”²⁷³ This same study also found that the Internet is now

²⁶⁹ John B. Horrigan, *Online News*, at 4 (Mar. 22, 2006) (“Online News”), http://www.pewinternet.org/~media/Files/Reports/2006/PIP_News.and.Broadband.pdf.pdf (last visited Feb. 4, 2010).

²⁷⁰ Aaron Smith, *The Internet’s Role in Campaign 2008*, at 7, 52 (Apr. 15, 2009), http://www.pewinternet.org/~media/Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf (last visited Feb. 4, 2010).

²⁷¹ Sydney Jones and Susannah Fox, *Generations Online in 2009*, at 5 (Jan. 28, 2009) (“Generations Online in 2009”), http://pewinternet.org/~media/Files/Reports/2009/PIP_Generations_2009.pdf (last visited Feb. 4, 2010). This represents a significant increase over prior years: in 2008, 37% of Americans reported receiving news through the Internet regularly; in 2006, 31% reported doing so; and in 2000, 23% reporting doing so. Pew Research Center for People & the Press, *Pew Research Center Biennial News Consumption Survey*, at 3-4 (Aug. 17, 2008) (“Biennial News Consumption Survey 2008”), <http://people-press.org/reports/pdf/444.pdf> (last visited Feb. 4, 2010).

²⁷² Biennial News Consumption Survey 2008, at 18.

²⁷³ Pew Internet & American Life Project, *Understanding the Participatory News Consumer* (Mar. 1, 2010) (“Participatory News Consumer”), at 10, *available at* http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.pdf (last visited Mar. 3, 2010).

the third most popular news platform behind local television news and national television news, surpassing radio (54%), local newspapers (50%), and national newspapers (17%).²⁷⁴ Among those who rely on only a single medium for news, 36% relied solely on the Internet, a higher figure than for any other medium.²⁷⁵

The Internet is a primary source for national and international news content. A recent survey asking people to identify their main source or sources for national and international news revealed that the Internet now serves as a primary source of such news for more Americans than newspapers and all other media sources except television.²⁷⁶ OBI Working Paper No. 1 found that by late 2009, 73% of Internet users reported getting international or national news on the Internet.²⁷⁷ Among younger Americans (those under 30), the same percentage that identified television as one of their main sources for national and international news – 59% – also identified the Internet as one of their main news sources.²⁷⁸

²⁷⁴ *Id.* at 3. In fact, by 2008, the percentage of Americans who reported receiving news online regularly significantly exceeded the percentage of individuals saying that they regularly watched the network evening news (29%) or the network morning news (22%), and amounted to nearly the same percentage of respondents indicating that they regularly watch cable news (39%). Biennial News Consumption Survey 2008, at 3-4. Even as of May 2007, according to an FCC-commissioned study by Nielsen Media Research, Inc., when asked what they considered the “most important source for more in-depth information on specific news and current affairs topics,” 23.5% of those surveyed cited Internet/websites, a higher percentage than those citing broadcast television stations (20.1%), local newspapers (9.8%), or national newspapers (4.7%). Nielsen Media Research, Inc., *Federal Communications Commission Telephone Study*, FCC Media Study 1, at 89 (June 2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A2.pdf (last visited Feb. 4, 2010). Similarly, more Americans surveyed cited Internet/websites (16.8%) as the most important source of national news and current affairs than cited national newspapers (5.9%) or local newspapers (4.8%). *Id.* at 93.

²⁷⁵ Participatory News Consumer, at 11.

²⁷⁶ Pew Research Center for the People & the Press, *Internet Overtakes Newspapers As News Outlet*, at 1 (Dec. 23, 2008) (“Internet Overtakes Newspapers”), <http://people-press.org/reports/pdf/479.pdf> (last visited Feb. 5, 2010); see also Participatory News Consumer, at 3.

²⁷⁷ OBI Working Paper No. 1, at 16.

²⁷⁸ Internet Overtakes Newspapers at 1.

Americans also are increasingly relying on the Internet for local news, and to connect more easily with government agencies. OBI Working Paper No. 1 found that 75% of Internet users access local or community news online.²⁷⁹ That study also found that 58.5% of all respondents reported using the Internet to visit local, state, or federal government websites, and 39% of all respondents used the Internet to get advice from a government agency about a health or safety issue.²⁸⁰ These findings hold true across racial categories. More than two-thirds (67%) of Black respondents and 61% of Hispanic respondents recently reported having visited local, state, or federal government websites.²⁸¹ And minorities are more likely to use the Internet to obtain information about or to apply for government benefits.²⁸²

The Internet is also a principal destination for political news and advocacy. Data from the last three Presidential election cycles show steady increases in the percentage of American adults who went online for news or information about politics or an election: rising from 18% in 2000 to 29% in 2004, and then jumping to 44% in 2008.²⁸³ The percentage of Americans citing the Internet as one of their *major* sources for election news more than doubled over the same period from just 11% in 2000 to 26% in 2008.²⁸⁴

²⁷⁹ OBI Working Paper No. 1, at 3, 16. A previous study had reached similar results. Pew Research Center for the People & the Press, *Many Would Shrug if Their Local Newspaper Closed*, at 9 (Mar. 12, 2009) (“Many Would Shrug”), <http://people-press.org/reports/pdf/497.pdf> (last visited Feb. 4, 2010) (reporting that 54% of respondents reported getting local news from the Internet either “regularly” (31%) or “sometimes” (23%)).

²⁸⁰ OBI Working Paper No. 1, at 3, 16. This finding is also consistent with previous studies. *See Generations Online in 2009*, at 5 (reporting that 59% of respondents indicated that they had visited government websites).

²⁸¹ *Minority Broadband Adoption*, at 21.

²⁸² *See id.*

²⁸³ *The Internet’s Role in Campaign 2008*, at 48.

²⁸⁴ *Id.* at 51.

It is not just the Internet's accessibility but also its interactivity that has contributed to its importance as a source of news and information. The interactive nature of the Internet distinguishes online sources from traditional media by allowing users to filter and select content specific to their interests and to contribute their own information, commentary, and opinions to the mix. In fact, the Pew Internet & American Life Project's Participatory News Consumer study released in March 2010 found that today "37% of Internet users have contributed to the creation of news, commented on it, or disseminated it via postings on social media sites like Facebook or Twitter."²⁸⁵ As more users are consuming Internet news and engaging in its creation and distribution, the medium increasingly performs the same functions as traditional news outlets, and also, in many respects, goes beyond traditional one-way news delivery. For these reasons, as early as 2003 and in the context of revising its media ownership rules, the Commission readily acknowledged the "important role [of the Internet] in the available media mix" as "a commonly-used source for news, commentary, community affairs, and national/international information."²⁸⁶ And in 2008 the agency further recognized that:

The nearly instantaneous speed with which consumers can now communicate via the Internet has created a vastly improved two-way flow in the sharing of ideas between traditional news gatherers and news consumers, with a consequent power to affect the priority that the traditional media place on coverage of certain events and topics. Many previously passive consumers of news are already taking advantage of the opportunities the Internet allows to influence the newsgathering process. More than ever

²⁸⁵ Participatory News Consumer, at 2; *see id.* at 40, 44 (finding that on a typical day, 51% of social networking site users get news from people they follow on sites such as Facebook or MySpace, 23% of this cohort specifically get news from news organizations or individual journalists that they follow on social networking sites, and 17% of Internet users have posted links and thoughts about news on a social networking site); *see also* OBI Working Paper No. 1, at 16 (reporting that 52% of all Internet users use the Internet to access social networking sites); The Nielsen Company, *Social Networking's New Global Footprint* (Mar. 9, 2009), <http://blog.nielsen.com/nielsenwire/global/social-networking-new-global-footprint/> (last visited Feb. 4, 2010) (documenting the increase in popularity of social networking sites in general).

²⁸⁶ 2003 Order, 18 FCC Rcd at 13,765-66 (¶ 365).

before, readers and audiences are themselves communicating with news gatherers to demand, directly and indirectly, coverage of specific topics.²⁸⁷

The Internet is also increasingly supplementing and substituting for broadcast television viewing. One-third of Americans – half of Internet users –regularly watch news video online.²⁸⁸ In fact, “[n]ews shows are the most popular online programs – watched by about 43% of online TV viewers.”²⁸⁹ Internet content aggregators and creators have recognized and responded to these user preferences. YouTube, Google’s video sharing website, has created a “News Near You” feature that, after recognizing a user’s location, aggregates video programming available on the site and provides the end user with a list of potentially relevant videos.²⁹⁰ YouTube also recently invited the more than 25,000 news sources listed on Google News, many of them local, to supply video for its site.²⁹¹ The great variety of a diverse supply of news sources online combined with Americans’ preference for news-on-demand – *i.e.*, at the news consumer’s convenience rather than at times selected by traditional media outlets²⁹² – will most certainly lead to increased use of online news sources.

²⁸⁷ 2008 Order, 23 FCC Rcd at 2032 (¶ 38).

²⁸⁸ Biennial News Consumption Survey 2008, at 21, 25.

²⁸⁹ Radio Business Report, Inc., *More Consumers Watch TV Online; Hulu Rising* (Sept. 8, 2009), <http://www.rbr.com/media-news/research/16890.html> (last visited Feb. 4, 2010) (citing the Consumer Internet Barometer, a quarterly report produced by The Conference Board and TNS based on surveys of 10,000 U.S. households).

²⁹⁰ Brian Stelter, *Now on YouTube, Local News*, N.Y. TIMES, Aug. 3, 2009, *available at* <http://www.nytimes.com/2009/08/03/business/media/03youtube.html> (last visited Feb. 4, 2010).

²⁹¹ *Id.* YouTube now hosts individual channels for Tribune’s WGN-TV, WPIX(TV), KTLA(TV), WSFL-TV, WTTV(TV), and WTIC-TV, among others. *See* <http://www.youtube.com/user/wgn> (last visited Feb. 18, 2010); <http://www.youtube.com/user/WPIX> (last visited Feb. 18, 2010); <http://www.youtube.com/user/ktla> (last visited Feb. 18, 2010); <http://www.youtube.com/user/WSFL> (last visited Feb. 18, 2010); <http://www.youtube.com/user/WTIC> (last visited Feb. 18, 2010).

²⁹² Biennial News Consumption Survey 2008, at 33.

Online video viewing continues to soar with nearly 31 billion videos viewed in November 2009 by more than 170 million U.S. Internet users.²⁹³ Indeed, one of the most popular sites – Hulu.com – is now commanding higher ad prices for some prime time shows than over-the-air TV,²⁹⁴ and reportedly had more viewers in July 2009 than Time Warner Cable, one of the nation’s largest cable operators.²⁹⁵ As a result of the dramatic growth in online viewing, Nielsen plans to incorporate online viewership into the TV ratings used for buying and selling of advertising this year.²⁹⁶

The rise of Internet sites such as Craigslist, a free online classifieds site with separate sub-domains for 500 cities across 50 countries that is now one of the most popular destinations online, shows how the Internet is taking on many of the functions long-served by traditional news media.²⁹⁷ Craigslist leverages filtering and search functionality in order to cater to an individual’s particular interest, and that and other online classified advertising services have contributed to the steep decline in the traditional print classifieds business.²⁹⁸ As Commissioner

²⁹³ PR Newswire, *November Sees Number of U.S. Videos Viewed Online Surpass 30 Billion for First Time on Record*, Jan. 5, 2010, <http://www.prnewswire.com/news-releases/november-sees-number-of-us-videos-viewed-online-surpass-30-billion-for-first-time-on-record-80739807.html> (last visited Feb. 4, 2010).

²⁹⁴ See Brett Pulley and Andy Fixmer, *Loyal ‘Simpsons’ Fans Fetch Higher Ad Rates on Web*, Bloomberg.com, June 25, 2009, <http://www.bloomberg.com/apps/news?pid=20601204&sid=atKGiQOMco.Y> (last visited Feb. 4, 2010).

²⁹⁵ See *Hulu Had More Viewers in July than Time Warner Cable*, BROADCAST ENGINEERING, Sept. 3, 2009, available at <http://broadcastengineering.com/news/hulu-had-more-viewers-in-july-than-time-warner-090709/> (last visited Feb. 4, 2010).

²⁹⁶ See Joe Mandese, *Nielsen Unveils Plan To Add Online Viewing To C3 Ratings*, MEDIA DAILY NEWS, Jan. 22, 2010, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=121116 (last visited Feb. 4, 2010).

²⁹⁷ Sydney Jones, *Online Classifieds*, at 4, 6 (May 22, 2009) (“Online Classifieds”), <http://www.pewinternet.org/~media/Files/Reports/2009/PIP%20-%20Online%20Classifieds.pdf> (last visited Feb. 4, 2010).

²⁹⁸ According to NAA, which tracks advertising expenditures in a number of categories and product/service types on an annual basis, total expenditures on classifieds in all categories declined by 29.7% in 2008 and another 38.1% in 2009. See *Annual Advertising Expenditures*.

Baker recently explained, “the success of Craigslist and eBay has significantly reduced highly profitable classified ads.”²⁹⁹ Other “classifieds” websites that have eroded classified advertising revenues for newspapers, contributing to their deteriorating financial condition, include job search sites, automobile search sites, and real estate search sites covering residential and commercial sales and rentals. OBI Working Paper No. 1 shows that by October/November 2009, 57% of adults who use the Internet reported accessing online classifieds websites.³⁰⁰ This is a significant increase over May 2009 when 49% reported doing so and an even more substantial increase over 2005 when 22% reported doing so.³⁰¹ The increasing use of such websites by consumers shows that people are turning to the Internet now more than ever for information previously provided largely by print copies of newspapers.

Expanding and improving broadband access is an important policy objective of Congress, the Obama Administration, and thus, the FCCs. In furtherance of that goal, Congress last year directed the FCC to submit a report detailing a national broadband plan which “shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal.”³⁰² Chairman Genachowski listed “[p]romoting universal broadband that’s robust, affordable and open” as *first* in a set of goals for the Commission under

²⁹⁹ *Hands off the Journalist*, Remarks of Commissioner Meredith Attwell Baker Before The Media Institute (Jan. 21, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295867A1.pdf (last visited Feb. 4, 2010).

³⁰⁰ OBI Working Paper No. 1, at 16. The Minority Broadband Adoption study showed that 78% of Black and 64% of Hispanic American respondents use the Internet to find information about employment opportunities, significantly outpacing the 48% of Whites who use the Internet for job information. Minority Broadband Adoption, at 20-23.

³⁰¹ Online Classifieds, at 3-4.

³⁰² See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115 (2009), codified at 47 U.S.C. § 1305(k).

his leadership,³⁰³ and recently explained that developing a broadband plan constitutes a task of “extraordinary importance.”³⁰⁴ On March 16, 2010, the FCC issued its broadband report to Congress – the National Broadband Plan. Several of its recommendations could significantly affect television broadcasting, including the proposed reallocation of portions of the present television broadcasting spectrum for non-broadcast mobile and wireless services, incentive spectrum auctions to encourage current spectrum holders to relinquish all or a portion of their current holdings, the imposition of user fees on spectrum holders, and rule changes to permit and encourage spectrum sharing and innovative uses of spectrum.³⁰⁵ On April 8, 2010, the FCC released its proposed “action agenda” for implementing key recommendations of the National Broadband Plan that involve rulemakings.³⁰⁶

2. Tribune’s Five Cross-Owned Markets Are Well-Served by Abundant Internet Sites That Unquestionably Contribute to Competition, Diversity, and Localism.

Today’s Internet users have a multitude of online news sources from which to receive diverse information and commentary, including not only local daily newspaper, television station, and radio news sites, but also local pages from national providers like CNN and

³⁰³ Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission (June 30, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291834A1.pdf (last visited Feb. 4, 2010); *see* Jim Puzzanghera, *FCC Chairman Has Broad Approach to Net Access*, L.A. TIMES, July 20, 2009, *available at* <http://www.latimes.com/business/la-fi-genachowski20-2009jul20,0,5802880.story> (last visited Feb. 4, 2010) (“What’s your top priority for the FCC? One is broadband. And the other is revitalizing and retooling the FCC.”) (emphasis in original); Chairman Genachowski Announces Topics to Focus Discussion at Workshops for National Broadband Plan (July 30, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292455A1.pdf (last visited Feb. 4, 2010) (“Broadband is our generation’s major infrastructure challenge.”).

³⁰⁴ Letter from Chairman Julius Genachowski, Federal Communications Commission, to the Honorable John D. Rockefeller, United States Senate; Kay Bailey Hutchison, United States Senate; Henry A. Waxman, U.S. House of Representatives; and Joe Barton, U.S. House of Representatives (Jan. 7, 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295546A1.pdf (last visited Feb. 4, 2010).

³⁰⁵ FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2009), *available at* <http://www.broadband.gov/plan/> (last visited Apr. 18, 2010).

³⁰⁶ FCC, Public Notice, *FCC Announces Broadband Action Agenda* (rel. Apr. 8, 2010).

MSNBC, portals and aggregators such as Google and Yahoo!, international news sites such as the BBC, local news blogs, alternative news sites such as Alternet or Newsmax, and news listservs.³⁰⁷ Locally oriented sites provide a rich source of unique information about, and perspectives concerning, community-wide issues. Importantly, a growing number also cater to highly localized, or even neighborhood-oriented, issues that often are too narrow for coverage by the mainstream media.³⁰⁸

Tribune's five cross-owned markets are served by a wide variety of local news and information sites. These include not only an exceedingly large number of text-based sites, but also sites providing video, on a broad range of topics including local news, weather, and media; business; social and community organizations; culture and the arts; recreational activities and sports; education; public safety and emergencies; government and civic services; food and culinary events; hospitals, health, and medical education; political parties and candidates; religion; style and society; tourism; transportation and infrastructure; utilities; and miscellaneous other subjects. Multiple local sites also offer user-supplied content and classified advertising for automobiles, goods and services, employment, and real estate.

As discussed above in detail for each of Tribune's five cross-owned markets, usage of *independent* local news and information sites in each market is extensive.³⁰⁹ The widespread availability and usage of these independent local websites contribute to the diversity of local

³⁰⁷ Online News, at 10-12.

³⁰⁸ There has also been a proliferation of hyperlocal news sites on the Internet. For instance, in June 2009, AOL acquired Patch and has since created AOL Patch local news web sites for small towns throughout New York, New Jersey, and Connecticut, with a goal of expanding the service to many more locales. www.patch.com (last visited July 6, 2010). Patch is "a community-specific news and information platform dedicated to providing comprehensive and trusted local coverage for individual towns and communities." Patch, About Us, <http://www.patch.com/about> (last visited July 12, 2010)..

³⁰⁹ See III.B, *supra*.

news and information available in the markets and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the local media marketplace.

3. Mobile Video and Other New Media Applications Provide Consumers with Convenient, On-the-Go Alternatives to Traditional Media.

The mobile video market is one of the fastest growing segments of the video marketplace,³¹⁰ competing with newspapers and broadcasting stations (and other media) for both audience share and advertisers seeking to reach those audiences. In fact, the mobile video audience grew 51.2% from first quarter 2009 to first quarter 2010.³¹¹ Mobile video can be accessed by a variety of methods including subscription wireless services on a mobile phone, downloads to a portable device, applications customized for the iPhone, iPad or BlackBerry, and over-the-air mobile DTV viewable on an array of portable devices as is being demonstrated this summer in a Washington, DC consumer trial.³¹² As technology advances to allow for more and varied ways for consumers to obtain and use news and information on-the-go, wireless providers, broadcasters, newspaper owners and other content providers are responding to the increased consumer demand for mobile video.

As the capabilities of mobile phones have increased in recent years, so has consumer use of their phones to watch video programming. A recent Nielsen survey found that the percentage of subscribers watching video on a mobile phone increased by 120% between the first quarter of

³¹⁰ See The Nielsen Company, *A2/M2 Three Screen Report: 1st Quarter 2010*, at 2(updated May 23, 2010) , http://en-us.nielsen.com/content/dam/nielsen/en_us/documents/pdf/Three%20Screen%20Reports/Nielsen_Three%20Screen%20Report_Q12010.PDF (“Nielsen A2/M2 Study”).

³¹¹ Nielsen A2/M2 Study at 2.

³¹² Glen Dickson, *Mobile DTV Rollout Continues*, *Broadcasting & Cable*, (July 12, 2010), *available at* http://www.broadcastingcable.com/article/454654-Mobile_DTV_Rollout_Continues.php.

2008 and the first quarter of 2010.³¹³ This trend appears likely to continue; indeed, a national survey conducted by Magid Media Labs found that nearly 9 out of 10 respondents were interested in watching live news and weather programming on mobile devices.³¹⁴ Although certainly other smartphones are available to consumers, Apple's iPhone was the first to truly capture the public's imagination about choosing the sources of their news, information and entertainment programming through the selection of web-based applications ("apps"). Since the introduction of the iPhone, many broadcast stations and newspapers have created apps for use on the iPhone, Droid, Blackberry, or other smartphone of choice to meet the consumer demand for portability.

The popularity of other Apple product offerings too, including the iPod and the newly introduced iPad, have similarly encouraged the creation of apps designed to provide consumers with news and information that is accessible when convenient to them. In fact, a search of the iPhone website for "news" apps (*excluding* sports and weather applications) generated a list of more than 480 applications, including apps such as *Nashville 24/7*, a hyperlocal news site; *The New Yorker* magazine; and *NPR Headline News*.³¹⁵ Among Tribune's holdings, the *Hartford Courant* and the Fort Lauderdale-based *Sun Sentinel* both offer podcast downloads on their websites directed toward mobile users. The *Chicago Tribune*, *Los Angeles Times*, and

³¹³ See Nielsen A2/M2 Study, at 3. "[T]he increased popularity of smartphones has created yet another opportunity for distributing video of all kinds outside of traditional broadcast and cable TV airing times and places."

³¹⁴ Open Mobile Video Coalition, *Survey Reveals Widespread Appeal of Over-The-Air Broadcast Mobile Digital Television Delivering Live, Local News & Weather*, Dec. 9, 2009, available at http://www.omvc.org/_assets/docs/press-releases/2009/OMVC-Survey-December-9-News-Release-FINAL.pdf (last visited July 12, 2010).

³¹⁵ Apple Web, <http://www.apple.com/webapps/news/> (last visited July 11, 2010).

WGN(AM) all offer customized iPhone applications to allow users to access real-time local news, sports, traffic, and weather from their respective websites.³¹⁶

The introduction of the larger-screen iPad has provided another mobile news opportunity for consumers and content providers alike.³¹⁷ For example, “Newsy,” an app designed solely for use on the iPad, is a news analyzer that aims to “become synonymous with the words ‘mobile video news’” by “win[ning] customers looking for an exceptional on-the-go news experience.”³¹⁸ But competition with traditional media isn’t limited to news and information categories - the iPad and other mobile devices also compete with broadcasters to provide entertainment programming. Hulu, for example, last month announced the launch of a subscription-based mobile app that will allow subscribers to download full seasons of some of the most popular shows on network television to watch on demand.³¹⁹ Some subscriber-based video content providers such as MobiTV and MediaFLO have also aggressively targeted nascent markets like that of in-vehicle live TV and on-demand programming.³²⁰

The end of analog broadcasting and the concomitant change to mandatory digital transmissions in June 2009 provided broadcasters with the opportunity to compete with such

³¹⁶ See Mobile Marketing Association, *News Over Wireless: Local TV Stations Launch iPhone Apps*, available at <http://www.mmaglobal.com/studies/news-over-wireless-local-tv-stations-launch-iphone-apps-news-over-wireless> (last visited July 6, 2010) (noting that top stories and weather content account for 50-60% of all traffic on the applications and that readers make heavy use of the application during severe weather events).

³¹⁷ *iPad’s Early App Economy: Games Dominant, News Makes Inroads*, paidcontent.org, Apr. 7, 2010, <http://paidcontent.org/article/419-ipad-early-app-economy-games-dominant-news-makes-in-roads/> (last visited Apr. 18, 2010).

³¹⁸ Newsy 2.0 Releases for iPad, available at <http://www.simplemobilereview.com/newsy-2-0-releases-for-ipad/> (June 7, 2010).

³¹⁹ Chloe Albanesius, *Hulu Announces Subscription-Based Hulu-Plus, iPad App*, PC Mag available at <http://www.pcmag.com/article2/0,2817,2365825,00.asp> (June 29, 2010).

³²⁰ Broadcasters have also taken first steps to meet the need for in-vehicle video programming as part of its mobile DTV testing. OMVC, *Mobile Digital Television Launch Gives Detroit Automakers Ideal Mobile Video Test Bed*, New Release, June 3, 2010.

subscriber-based services by providing mobile DTV news, entertainment, and public safety programming.³²¹ With the adoption of a mobile standard for over-the-air television in late 2009, television broadcasters are poised to take advantage of the mobile trend.³²² Indeed, currently more than 50 stations are broadcasting a mobile DTV signal.³²³ Trials of the OMVC mobile TV standard are continuing in Washington, D.C., with positive results.³²⁴ Recently, twelve major television broadcast groups, including NBC Universal, Fox, and ION, announced a joint venture designed to take the next step to accelerate nationwide optimization of broadcast mobile DTV; the participating companies will contribute spectrum and content for a mobile over-the-air service that is expected to reach 150 million viewers. While over-the-air mobile DTV is still in its infancy and is likely to draw on existing sources of content initially, it is reasonable to anticipate that the launch of this new mobile service will drive the creation of content directed exclusively toward mobile viewers.³²⁵

In addition to mobile video applications, there are a host of new ways proposed or existing for information providers to reach audiences. In May, Google announced its Google TV, which will merge television with the Internet on a consumer's television set.³²⁶ Google TV

³²¹ *Open Mobile Video Coalition: About Mobile DTV*, available at <http://www.omvc.org/about-mobile-dtv/> (last visited July 12, 2010).

³²² Glen Dickson, *Mobile DTV Standard Approved*, BROAD. & CABLE, Oct. 16, 2009, available at http://www.broadcastingcable.com/article/358341-Mobile_DTV_Standard_Approved.php.

³²³ Glen Dickson, *Mobile DTV Rollout Continues*, BROAD. & CABLE, (July 12, 2010), available at http://www.broadcastingcable.com/article/454654-Mobile_DTV_Rollout_Continues.php.

³²⁴ Open Mobile Video Coalition, *First Results from Mobile Digital TV Consumer Showcase Records High Excitement about Potential for Over-the-Air Mobile Broadcasts*, Press Release (June 22, 2010).

³²⁵ *See* Mobile Content Writers, <http://www.mobilecontentwriters.com> (last visited July 6, 2010) (a company focused on creating new mobile content).

³²⁶ The Official Google Blog: *Announcing Google TV: TV Meets Web. Web Meets TV.*, available at <http://googleblog.blogspot.com/2010/05/announcing-google-tv-tv-meets-web-web.html> (May 20, 2010).

will allow users to search for and record video from television channels and web sites alike, as well as to store and view personal photos, play music, use social networking sites, and game online.³²⁷ Built on an open source platform and powered by Google's Android software,³²⁸ Google has urged web designers to devise new web and Android applications for the Google TV that would translate well to a television screen.³²⁹ Google has already formed strategic partnerships with Sony to build the service into its televisions and Blu-ray players, with Logitech to develop a set-top box for use with television sets without the service built in,³³⁰ and Best Buy to sell the devices.³³¹ Google expects to offer the service to the public beginning in the fall of 2010.³³² The service promises to further expand consumers' television and video programming options, and to quickly and easily find and deliver desired selections.

There are also sources of news, information and entertainment programming placed in locations that consumers frequent as well. For example, there are now screens conveying news, information, and advertising – much of it locally oriented – in building lobbies and elevators, taxicabs, truck stops, gas stations, and other locales.³³³ These screens, along with mobile video

³²⁷ Google TV: TV Meets Web. Web Meets TV, *available at* <http://www.google.com/tv/> (last visited July 11, 2010).

³²⁸ Brad Stone, *Google Moves to TVs with Help From Intel and Sony*, New York Times, B1, May 21, 2010.

³²⁹ The Official Google Blog: *Announcing Google TV: TV Meets Web. Web Meets TV.*, *available at* <http://googleblog.blogspot.com/2010/05/announcing-google-tv-tv-meets-web-web.html> (May 20, 2010).

³³⁰ Logitech's set top box for this purpose, the Revue, was provided to the Commission last week. Donald Melanson, *Logitech Revue Google TV Box Hits the FCC*, Engadget, *available at* <http://www.engadget.com/2010/07/05/logitech-revue-google-tv-box-hits-the-fcc/> (July 5, 2010).

³³¹ Brad Stone, *Google Moves to TVs with Help From Intel and Sony*, New York Times, B1, May 21, 2010.

³³² Google, *Google TV: Frequently Asked Questions (FAQ)*, *available at* <http://www.google.com/tv/faq/> (last visited July 12, 2010).

³³³ See, e.g., Out of Home Video Advertising Bureau, www.ovab.org (last visited Feb. 4, 2010); see also Out of Home Video Advertising Bureau, *Network Planning Guide*, <http://www.ovab.org/OVAB%20Network%20Planning%20Guide%20August.xls> (last visited Feb. 4, 2010) (providing information regarding various providers of out of home video screens).

applications, provide additional and alternative sources of information, adding to the diversity of voices available in local markets. This overwhelming diversity compels repeal of the NBCO Rule.

IV. SINCE THE FCC LAST CONSIDERED REPEAL OF THE NBCO RULE, “TRADITIONAL MEDIA” INDUSTRIES HAVE EXPERIENCED SEVERE FINANCIAL DIFFICULTIES DUE TO THE GENERAL ECONOMIC DOWNTURN AND CHALLENGES TO THEIR BUSINESS MODEL CAUSED BY COMPETITION FROM NEW TECHNOLOGIES.

As the Commission has acknowledged on multiple occasions, including in the NOI, the newspaper industry is struggling financially. In the 2008 Order, which grafted very modest waiver standards on to the NBCO Rule, the FCC recognized that newspapers were in a downward cycle and that regulatory relief was appropriate. As the agency concluded in its 2008 Order, “[t]he emergence of new forms of electronic media in recent years has come at the expense of traditional media, and of newspapers in particular.”³³⁴ The Commission observed that, although “the population of the country has increased more than 80 percent” during the past fifty years, “the number of daily newspapers being published and their readership have decreased significantly” over this same period.³³⁵

The agency further noted that the recent, substantial drop in newspaper circulation had produced “a cascade of negative impacts on the media industry.”³³⁶ Among these was a “sharp reduction in the number of professional journalists employed in the newspaper industry,” a trend that had “particular import for the public interest.”³³⁷ The FCC further observed that newspaper

³³⁴ 2008 Order, 23 FCC Rcd at 2023 (¶ 21).

³³⁵ *Id.* at 2026 (¶ 27).

³³⁶ *Id.* (¶ 28).

³³⁷ *Id.*

publishers had experienced a “flatten[ing]”³³⁸ of the advertising revenues that “keep [them] alive” and that “stock prices for many of the major newspaper companies ha[d] fallen.”³³⁹

Since issuance of the 2008 Order, conditions in the newspaper industry have worsened. Newspapers across the country have reduced their frequency of publication; eliminated print-editions in favor of online-only editions; and, in some cases, shut down altogether. Some publishers, like Tribune, have declared bankruptcy. In addition, some publishers have been forced to close domestic and foreign news bureaus³⁴⁰ and/or to trim the scope of their news coverage.³⁴¹ Virtually all publishers – in both large and small markets across the country – have laid off valued newsroom employees and/or imposed pay reductions in order to stem severe losses.³⁴²

In 2009, newspapers saw their advertising revenues tumble roughly 26%, a total loss since 2006 of 43%.³⁴³ The 2009 rate of decline was more than 50% steeper than in 2008, when

³³⁸ *Id.* at 2029 (¶ 32).

³³⁹ *Id.* at 2028 (¶ 30), 2029 (¶ 33).

³⁴⁰ Pew Project for Excellence in Journalism, *The State of the News Media* (2010) (“PEJ 2010 State of the News Media Report”), Newspapers, News Investment at 29, http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm (last visited July 1, 2010).

³⁴¹ For example, The Washington Post eliminated its stand-alone Business Section and did away with the print version of “Book World.” Robert MacMillan, *Washington Post to Cut Business Section*, REUTERS, Mar. 13, 2009, available at <http://www.reuters.com/article/newsOne/idUSTRE52C5NP20090314> (last visited July 1, 2010).

³⁴² During one week alone in March 2009, *The New York Times*, *The Boston Globe*, the *Boston Herald*, the *Houston Chronicle*, the *Atlanta-Journal Constitution*, the *Milwaukee Journal Sentinel*, and *The Buffalo News* all announced substantial layoffs and pay cuts. Jennifer Harper, *Newspapers Seek Way Out of Hole*, WASH. TIMES, Mar. 29, 2009, at A03, available at <http://www.washingtontimes.com/news/2009/mar/29/newspapers-on-defense-nationwide/> (last visited July 1, 2010).

³⁴³ PEJ 2010 State of the News Media Report, Executive Summary at 1, 8-9, http://www.stateofthemediamedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited July 1, 2010) (“Advertising losses, averaging 26% in 2009 (on the heels of a cumulative 23% loss the previous two years) left newspapers downsizing everything – the physical dimensions of the paper, the space devoted to news and, most painfully, their roster of news professionals.”); see also Nat Worden, *Ad Revenue Eludes Papers*, WALL ST. J., Nov. 4, 2009, available at <http://online.wsj.com/article/SB10001424052748703740004574513522033216210.html> (last visited July 1, 2010) (“The reality is that newspapers are suffering severe declines in ad revenue this year on top of the double-digit percentage declines they suffered last year.”); Erik Sass, *No Rest for the Dreary: Newspaper Revs Fall 28%*, MEDIA DAILY NEWS (MediaPost), Nov. 19, 2009, available at

the newspaper industry's total advertising revenues declined 16.6%.³⁴⁴ Even revenues from online advertising on newspaper websites – which often has been hailed as the industry's most promising future growth engine – declined by more than 10% in 2009 and accounted for just 10% of overall revenue.³⁴⁵ The current economic recession has exacerbated this downward trend considerably, as advertisers have cut spending steeply in order to stem their own revenue losses. Among the most pronounced have been cutbacks in automobile advertising due to bankruptcies and financial turmoil in that industry, in real estate advertising due to the real estate bust and subprime mortgage crisis, and in retail due to decreases in consumer spending.³⁴⁶ Classified

http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=117749 (last visited Feb. 9, 2010) (noting that total newspaper industry advertising revenues tumbled 28% from third quarter 2008 to third quarter 2009, and that the newspaper industry's total print revenues experienced year-over-year declines for 14 straight quarters, while online revenues fell for 6 straight quarters).

³⁴⁴ PEJ 2010 State of the News Media Report, Executive Summary at 8, http://www.stateofthemedial.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited July 1, 2010); see also Annual Advertising Expenditures, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> ("Annual Advertising Expenditures") (last visited July 1, 2010).

³⁴⁵ See PEJ 2010 State of the News Media Report, Newspapers, Summary Essay at 2, Economics at 20-21, http://www.stateofthemedial.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010); see also Annual Advertising Expenditures; Erik Sass, Newspapers' Online Strategies Failed in 2009, MEDIA NEWS POST, Dec. 29, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119834 (last visited Feb. 9, 2010) (observing that "[s]ome of the worst defeats for newspapers in 2009 came in online advertising," and citing Newspaper Association of America data showing that newspapers' online revenues declined 15.5% in the first three quarters of 2009 compared to the same period in 2008); NAA, Nielsen: Newspaper Sites Get 5.5% Rise in '09 Visitors, MEDIA NEWS POST, Feb. 3, 2010, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=121745 (last visited July 1, 2010) (noting that "[t]hrough the first three quarters of 2009, the NAA tallied total Internet revenues of about \$1.97 billion, representing just under 10% of total revenues of \$19.9 billion").

³⁴⁶ See Greg Bensinger and Bob Van Voris, Chicago's Sun-Times Media Seeks Bankruptcy Protection (Update3), Bloomberg.com, Mar. 31, 2009, <http://www.bloomberg.com/apps/news?pid=20601087&sid=ajAExsdEoCRs> (last visited July 1, 2010) ("Advertisers, particularly auto, retail and classified, have pulled back [in newspaper advertising] as the economy gets worse and worse."); Richard Pérez-Peña, Newspaper Ad Revenue Could Fall as Much as 30%, N.Y. TIMES, Apr. 14, 2009, available at <http://www.nytimes.com/2009/04/15/business/media/15papers.html> (last visited July 1, 2010) (reporting that, in 2008, "[s]ome of the biggest categories of advertising, like real estate and help wanted, all but evaporated" for newspapers); Erik Sass, No Rest for the Dreary: Newspaper Revs Fall 28%, MEDIA DAILY NEWS (MediaPost), Nov. 19, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=117749 (last visited July 1, 2010) (noting that newspapers experienced a 43% decline in real estate and automotive advertising revenues in the third quarter of 2009); Wayne Friedman, Nielsen: U.S. Ad Spend Falls 11.5%, MEDIA DAILY NEWS (MediaPost), Dec. 10, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=118897 (last visited July 1, 2010) (reporting that overall U.S. advertising spending declined 11.5% during the first nine months of

advertising revenues, in particular, have trended downward, both because of the poor economy in general and because of consumers' rapid adoption of online alternatives.³⁴⁷ It is not surprising that these decreases have had a disproportionate impact on newspaper publishers, given the importance of advertising earnings to their business models.³⁴⁸

On top of steep losses in advertising revenue, newspaper publishers are facing unprecedented circulation declines. In October 2009, the Audit Bureau of Circulations reported that newspaper sales had plummeted 10.6% on weekdays and 7.5% on Sundays compared with a year earlier – bringing overall circulation to its lowest point in nearly 70 years.³⁴⁹ This sharp

2009, compared to the same time period a year ago, and noting that many of the same declining advertising categories, including automotive, continue to hurt media sales results).

³⁴⁷ See Hands Off the Journalist, Remarks of Commissioner Meredith Attwell Baker Before The Media Institute (Jan. 21, 2010) (observing that “the success of Craigslist and eBay has significantly reduced highly profitable classified ads”); PEJ 2010 State of the News Media Report, Newspapers, Economics at 18, http://www.stateofthemedial.org/2010/printable_newspaper_chapter.htm (last visited July 1, 2010) (“By early 2007, the industry had already lost a significant share of the once-lucrative classified advertising franchise to competitors like Monster, Craigslist and Google search. The recession then made the decade-long swoon worse, with classified falling 40% [in 2009].”); Rick Poynter, Classified Ad Revenue Down 70% in 10 Years, With One Bright Spot, POYNTER ONLINE – THE BIZ BLOG, Feb. 1, 2010, <http://www.poynter.org/column.asp?id=123&aid=177005> (last visited July 1, 2010) (finding that the overall decline in the newspaper industry’s classified ad earnings during the past decade “was a stunning 70 percent – from \$19.6 billion in 2000 to roughly \$6 billion in 2009”).

³⁴⁸ TNS Media Intelligence, TNS Media Intelligence Reports U.S. Advertising Expenditures Declined 14.7 Percent In First Nine Months of 2009, Dec. 8, 2009, <http://www.tns-mi.com/news/2009-Ad-Spending-Q3.htm> (last visited July 1, 2010) (reporting that total measured advertising expenditures in the first nine months of 2009 dropped by 14.7 percent as compared to the same period in 2008, that ad spending during the third quarter of 2009 was down 15.3 percent versus last year, and that newspapers and radio severely lagged the overall ad market during this period); see also Erik Sass, Newspapers To Hit Bottom in 2010 . . . Maybe?, MEDIA DAILY NEWS (MediaPost), Dec. 16, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119282 (last visited July 1, 2010) (citing a survey of newspaper publishers, who agree that advertising revenues will continue to decline in 2010 and that losses will be “spread across classifieds, national, and retail (or local) advertising – in other words, all the major newspaper advertising categories”); Joe Mandese, Nielsen: U.S. Ad Spending Plummets \$3.8 Billion, MEDIA DAILY NEWS (MediaPost), June 8, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=107497 (last visited July 1, 2010) (reporting that ad spending in the first quarter of 2009 was down 37.7% in Sunday newspaper supplements, which “experienced the greatest erosion of any major U.S. ad medium,” with ad spending in national newspapers close behind at a 27.7% drop); Deborah Yao, Global Ad Spend Still to Fall, Signs of Bottoming, ABC News (Associated Press), July 6, 2009, available at <http://abcnews.go.com/print?id=8011994> (last visited July 1, 2010) (reporting drop in advertising spending world-wide, with “U.S. ad spending for newspapers . . . expected to fall most steeply”).

³⁴⁹ PEJ 2010 State of the News Media Report, Newspapers, Summary Essay at 2, Audience at 8, http://www.stateofthemedial.org/2010/printable_newspaper_chapter.htm (last visited July 1, 2010) (citing data from the Audit Bureau of Circulations and noting that these numbers represent a decline in print audiences of 31.5% and 27% for daily and Sunday circulation, respectively, from peak totals in the last 25 years); Frank Ahrens, The

drop followed declines of 7.1% from October 2008 through March 2009 and 4.1% from April through September 2008.³⁵⁰ Thus, while newspaper circulation has been declining for many years, the recent losses indicate an accelerating trend.³⁵¹ The twofold hit that newspaper publishers have taken as a result of the downturns in advertising and circulation revenues is further reflected in the fact that the stock of publicly traded newspaper companies plunged nearly 83% in 2008.³⁵² Although the stock prices of publicly traded newspaper companies increased in 2009 over their 2008 levels, they remain drastically lower than prices in 2005, shedding on average nearly three-quarters of their value in the past four years.³⁵³

This turmoil has been recognized at the highest levels of government; indeed, U.S. House of Representatives Speaker Nancy Pelosi sent a letter last year to Attorney General Eric Holder chronicling the dire financial state of the newspaper industry and suggesting a need to alter the

Accelerating Decline of Newspapers, WASH. POST, Oct. 27, 2009, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html> (last visited July 1, 2010).

³⁵⁰ Barbara Ortutay, Newspaper Circulation Falling Fast, USA TODAY, Oct. 26, 2009, *available at* http://www.usatoday.com/money/media/2009-10-26-newspaper-circulation_N.htm (last visited July 1, 2010); Shira Ovide, U.S. Newspaper Circulation Falls, WALL ST. J., Oct. 27, 2009, *available at* <http://online.wsj.com/article/SB10001424052748703697004574497293992459948.html> (last visited July 1, 2010).

³⁵¹ *See* Richard Pérez-Peña, U.S. Newspaper Circulation Falls 10%, N.Y. TIMES, Oct. 27, 2009, *available at* http://www.nytimes.com/2009/10/27/business/media/27audit.html?_r=1 (last visited July 1, 2010) (noting that “[t]he two-decade erosion in newspaper circulation is looking more like an avalanche” and that “after years of slipping,” circulation has “accelerated sharply downward”); Frank Ahrens, The Accelerating Decline of Newspapers, WASH. POST, Oct. 27, 2009, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html> (last visited July 1, 2010) (noting that “[a]verage daily circulation of all U.S. newspapers has been in decline since 1987”).

³⁵² Pew Project for Excellence in Journalism, The State of the News Media (2009) (“PEJ 2009 State of the News Media Report”), Executive Summary at 10, <http://www.stateofthemediamedia.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf> (last visited July 1, 2010).

³⁵³ *See* Alan Mutter, News-Stock Surge: Boom or Dead-Cat Bounce?, Reflections of a Newsosaur, Jan. 4, 2010, <http://newsosaur.blogspot.com/2010/01/news-stock-surge-boom-or-dead-cat.html> (last visited July 1, 2010); PEJ 2010 State of the News Media Report, Newspapers, Summary Essay at 2, 5, Economics at 24, http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm (last visited July 1, 2010) (reporting that only one newspaper company stock was trading for more than \$5 a share and several were in “penny stock territory” in March 2009 and, though stocks had ticked up by the end of the year from “the rock bottom prices of spring 2009,” the valuations were still just a small fraction of what they had been in 2005 and 2006).

traditional approach to considering transactions involving newspapers in light of the industry's troubled financial condition.³⁵⁴ In launching its "Future of Media" initiative earlier this year, the Commission similarly acknowledged that "[t]he layoffs of thousands of journalists have prompted concern from a wide variety of independent analysts and groups that we may end up with fewer 'informed communities'" and that "[t]hese trends could have dire consequences for our democracy and the health of communities, hindering citizens' ability to hold their leaders and institutions accountable."³⁵⁵

The broadcast industry similarly is in the midst of a serious financial retrenchment. As the Project for Excellence in Journalism recently reported, earnings at local television stations were "in a free fall" in 2009; at the end of the year, "industry revenues had fallen to levels not seen since the mid-1990s."³⁵⁶ In particular, television stations' advertising revenue is estimated to have dropped 22% in 2009, more than triple the decline of 7% in 2008.³⁵⁷ Notably, this

³⁵⁴ See Letter from Nancy Pelosi, Speaker of the House, to The Honorable Eric J. Holder, Attorney General of the United States (Mar. 16, 2009). On September 24, 2009, the House Joint Economic Committee, chaired by Representative Carolyn Maloney (D-NY), held hearings on the implications of the deterioration of the newspaper industry for the broader economy and explored options for federal government involvement to help strengthen the industry. See Ann Sanner, *Newspaper Rep Urges Tax Break To Help with Losses*, ABC News (Associated Press), Sept. 24, 2009, available at <http://abcnews.go.com/Politics/wireStory?id=8667155> (last visited Feb. 9, 2009). Further, in connection with a recent 2010 Quadrennial Review workshop focusing on the current financial and economic conditions and marketplace factors affecting the media industry, lenders appearing on a panel pointed to the "perfect storm" of a down economy that hammered overleveraged broadcasters and Internet competition that continues to drain advertising dollars away from the sector, resulting in a lack of interest in lending to broadcasters. See FCC, News Release, *Media Bureau Announces Panelists and Agenda for Media Ownership Workshop on Financial and Marketplace Issues*, MB Docket No. 09-182 (rel. Jan. 5, 2010); see also John Eggerton, *Lenders Make Pitch to FCC to Loosen Media Ownership Rules*, BROAD. & CABLE, Jan. 12, 2010, available at http://www.broadcastingcable.com/article/443725-Lenders_Make_Pitch_to_FCC_to_Loosen_Media_Ownership_Rules.php (last visited Feb. 9, 2010). Speakers on a second panel about smaller broadcasters were in agreement that additional broadcast bankruptcies are likely due to the financial conditions in the industry. See Jonathan Make, *Media Deregulation Seen Helping Cash-Strapped Industry*, COMM. DAILY, Jan. 13, 2010, at 4-6.

³⁵⁵ Future of Media Public Notice, *supra* note 65, at 1-2.

³⁵⁶ PEJ 2010 State of the News Media Report, Local TV, Summary Essay at 1, Economics at 9, http://www.stateofthemedias.org/2010/printable_local_tv_chapter.htm (last visited July 1, 2010).

³⁵⁷ PEJ 2010 State of the News Media Report, Executive Summary at 1, http://www.stateofthemedias.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited July 1, 2010); PEJ 2009

represents a decrease of 25% from the previous non-election year.³⁵⁸ While stations did experience growth in advertising revenue from their websites, these earnings amounted to only 8% of their 2009 revenues.³⁵⁹ These results have crippled television station budgets and severely strained stations' ability to deliver local news.³⁶⁰ Due to the "structural challenge" currently facing the industry, "[s]tations, after years of declines in audience, may be nearing a point where they can no longer add new newscasts or pursue new revenue opportunities. . . ."³⁶¹ The newsgathering operations of struggling broadcasters are "getting smaller,"³⁶² and many have been

State of the News Media Report, Executive Summary at 20, <http://www.stateofthemedial.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf> (last visited July 1, 2010); *see also* Television Bureau of Advertising, Broadcast Television Ad Revenues Were Down 22.6% in 3rd Quarter, Dec. 18, 2009, http://www.tvb.org/rcentral/AdRevenueTrack/revenue/2009/ad_figures_1.asp (last visited July 1, 2010); PEJ 2010 State of the News Media Report, Local TV, Economics at 10, http://www.stateofthemedial.org/2010/printable_local_tv_chapter.htm (last visited July 1, 2010) (reporting that, in the first nine months of 2009, automobile advertising – the most important advertising category for local television stations – was down 52%, and that revenue from 24 of the top 25 categories of local television advertisers was down sharply during this time period).

³⁵⁸ PEJ 2010 State of the News Media Report, Local TV, Summary Essay at 1, Economics at 9, http://www.stateofthemedial.org/2010/printable_local_tv_chapter.htm (last visited July 1, 2010) ("Ad revenue is always lower in a year without federal elections or the Olympics, but the drop in 2009 was especially severe even with the unexpected bounty of political spending on health care legislation. . . . The last two non-election years, by contrast, recorded much smaller declines: 5% in 2005 and 6% in 2007.").

³⁵⁹ *Id.*, Summary Essay at 1 (noting further that there is "little prospect of [online revenues] buoying [local television stations] anytime soon"); *see also id.*, Economics at 10 (noting that on-air advertising revenues represent "\$9 out of every \$10" of TV station revenues).

³⁶⁰ *See id.*, News Investment at 17 (citing the latest survey data from 2008 that shows "hefty budget reductions and deep cuts in the newsroom," and stating that news directors at local stations expected their budgets to be even smaller in 2009 than they were in 2008).

³⁶¹ *Id.*, Summary Essay at 1. Broadcasters' budgets, furthermore, were already strained by the mandated capital-intensive digital television conversion.

³⁶² PEJ 2010 State of the News Media Report, Local TV, Summary Essay at 1, http://www.stateofthemedial.org/2010/printable_local_tv_chapter.htm (last visited July 1, 2010).

forced to lay off news staff or implement hiring freezes.³⁶³ Radio stations have similarly been suffering, with 2009 revenues down 18% compared to 2008 revenues.³⁶⁴

Although the synergies achieved through newspaper/broadcast cross-ownership have long outweighed any imagined detriment, in the face of declining revenues and dwindling staffs, the need for repeal of the NBCO Rule is immediate. The financial crisis, and the havoc it has wrecked on the media industry, has come at the very same time that the industry is experiencing profound challenges to its business model from the advent of new technologies and the various alternatives they offer advertisers and consumers. The concurrence of these two trends – overall economic decline and precipitous erosion of “traditional media’s” financial basis – compels elimination of the NBCO Rule.

The benefits of cross-ownership can help existing combinations continue to deliver the high quality and large volume of local news and public affairs programming their communities have come to expect. Immediate repeal will allow stand-alone properties to combine so they can take advantage of the benefits of cross-ownership.

Newspaper and broadcast properties have suffered from the torturous history of Commission and court review of the NBCO Rule. Expeditious repeal, at this point, would allow both newspaper owners and broadcast station owners to respond to the very real financial challenges they confront. Such relief is now more necessary than ever.

³⁶³ See, e.g., Sarah McBride, Clear Channel’s Parent Cuts 590 Jobs, WALL ST. J., Apr. 29, 2009, available at <http://online.wsj.com/article/SB124095285316665235.html> (last visited July 1, 2010) (reporting Clear Channel Communications Inc.’s decision to cut 590 jobs in its second round of mass layoffs in 2009 amid pressure from the recession and evaporating advertising budgets).

³⁶⁴ PEJ 2010 State of the News Media Report, Audio, Summary Essay at 2, http://www.stateofthemedias.org/2010/printable_audio_chapter.htm (last visited July 1, 2010).

V. FAILURE TO REPEAL THE NBCO RULE WOULD VIOLATE ADMINISTRATIVE PROCEDURE ACT AND THE CONSTITUTION.

As demonstrated below, retention of the NBCO Rule would violate the Administrative Procedure Act (“APA”) as well as both the First and Fifth Amendments to the Constitution. Therefore, it must be repealed.

A. Administrative Law Principles Require Repeal of The NBCO Rule.

The NBCO Rule must be repealed because it violates the APA. The Commission has now twice expressly rejected an absolute ban with respect to newspaper/broadcast cross-ownership; to reverse course and retain the NBCO Rule would thus be arbitrary and capricious. Based on abundant factual evidence demonstrating the benefits of common ownership and the tremendous diversity and competition among newspapers and other media properties (especially in large markets, like Tribune’s), the Commission has found on two prior occasions that a blanket NBCO ban does not serve the public interest.³⁶⁵ This finding has been affirmed by the Third Circuit.³⁶⁶ Tribune submits that retention of the NBCO Rule at this juncture cannot be justified on the basis of the evidence, and any different conclusion must be well supported in the record.”³⁶⁷

Nor can the agency cannot on the Supreme Court’s decision, rendered more than 30 years ago, regarding the facial constitutionality of the NBCO Rule to justify its retention. “The mere fact that a rule is not unconstitutional does not therefore mean that its perpetuation is not

³⁶⁵ See 2003 Order ¶ 342.

³⁶⁶ See *Prometheus*, 373 F.3d 398-99.

³⁶⁷ *Fox Television Stations, Inc. v. FCC*, 129 S. Ct. 1800, 1811 (2009) (finding that an agency that departs from prior decisions must “provide a more detailed justification . . . when . . . its new policy rests upon factual findings that contradict those which underlay its prior policy); see also *Wyeth v. Levine*, 129 S. Ct. 1187, 1203-04 (2009) (concluding that an agency statement that “represent[ed] a dramatic change in position” “does not merit deference” and “is entitled to no weight”).

arbitrary and capricious.”³⁶⁸ Simply put, a “thirty year old conclusion that . . . [a] challenged rule[] survive[s] First Amendment scrutiny” cannot justify its retention “in the face of modern challenges to the rules’ consistency with the FCC’s regulatory mandate.”³⁶⁹

The Commission simply cannot, consistent with the APA, ignore the vast changes that have occurred in the media marketplace since 1975 -- changes that now render the NBCO Rule obsolete. These changes include not only the growth in the number of traditional media sources – newspapers and broadcast television and radio stations – but also the introduction and increase in popularity of newer sources, perhaps most significantly, the Internet.³⁷⁰ It would be arbitrary and capricious for the Commission to ignore the dramatic impact on the manner in which people obtain news and information that the Internet has had in evaluating the continued viability of the NBCO Rule, particularly given the agency’s and Congress’ recognition of the significance of the Internet in other contexts.³⁷¹ Indeed, Congress recognized the importance of the Internet in facilitating diversity and civic discourse by instructing the Commission to develop the National Broadband Plan.

FCC Commissioners and high-ranking staff also have acknowledged the fundamental changes that new technologies, particularly the Internet, have brought about. For instance,

³⁶⁸ *RTNDA*, 184 F.3d at 882.

³⁶⁹ *Id.*

³⁷⁰ *See supra* Section III.C.1.

³⁷¹ At the heart of the APA’s “reasoned decisionmaking” requirement is the need for an agency to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs.’ Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1989); *see also HBO, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (“[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.”); *Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434, 1463 (D.C. Cir. 1985) (“[T]he Commission has failed entirely to determine whether the evil the rules seek to correct is a real or merely a fanciful threat.”). Nor may the Commission take the Internet into account in its other proceedings, such as its broadband review, while ignoring it here. *Cf. Airline Pilots Ass’n v. FAA*, 3 F.3d 449, 453 (D.C. Cir. 1993) (striking down agency decision as “internally inconsistent and therefore unreasonable and impermissible under *Chevron*”); *General Chemical Corp. v. United States*, 817 F.2d 844, 855 (D.C. Cir. 1987) (finding agency decision arbitrary and capricious due to its “inconsistencies” and “failures of explanation”).

Commissioner Clyburn recently explained that “[t]oday, thanks to an open Internet, a small community newspaper or a budding journalist essentially has the same distribution The NBCO Rule must be repealed because its continued retention would violate the APA.

B. The NBCO Rule Is Unconstitutional and Thus Must Be Repealed.

The Commission should acknowledge that the NBCO Rule is unconstitutional and must be repealed. The Third Circuit in *Prometheus* rejected constitutional challenges to the NBCO Rule, but it did so largely because it believed it was bound to do so by Supreme Court precedent.³⁷² However, those precedents are decades old, and as even the Third Circuit acknowledged, they rest on facts that have changed dramatically in the intervening years.

There is no doubt that the Supreme Court will review these issues following the appeal of the Commission’s remand proceeding. The Commission should therefore recognize – as numerous lower court judges have already – that the constitutional underpinnings of the NBCO Rule have become extremely dubious and almost certainly could not be sustained as applied in most circumstances today. Indeed, Justice Thomas, in his recent separate opinion in *Fox*, joined the chorus of judges questioning the continuing validity of the scarcity doctrine, upon which the *NCCB* court had relied.³⁷³ At a minimum, and following the guidance of Section 202(h), the Commission should err on the side of deregulation to avoid the constitutional issues.

The NBCO Rule is unconstitutional; it cannot survive the appropriate level of First Amendment review and it violates the equal protection clause of the Fifth Amendment. The NBCO Rule does not implicate the scarcity doctrine and therefore is subject to heightened scrutiny under the First Amendment. Even if the scarcity doctrine is implicated, the Commission

³⁷² See *Prometheus*, 373 F.3d at 401-02 (citing *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (only the Supreme Court can overrule its own precedents)).

³⁷³ *Fox Television Stations*, 129 S. Ct. at 1822 (Thomas, J., concurring (“For all these reasons, I am open to

should recognize that the proliferation of media outlets (let alone media industries) since the 1970s renders the scarcity doctrine invalid today. The NBCO Rule also violates the equal protection component of the Fifth Amendment because it unconstitutionally singles out newspapers from among non-broadcast major media for special speech restrictions.

Because the NBCO Rule Does Not Implicate the Scarcity Doctrine, Heightened Scrutiny Is the Appropriate Level of Review, and the NBCO Rule Cannot Survive Heightened Scrutiny.

a. The NBCO Rule Does Not Implicate Scarcity.

Courts have rejected First Amendment challenges to the NBCO Rule based solely on the assumed applicability of the “scarcity doctrine.” As the Supreme Court has explained, “[w]hen there are substantially more individuals that want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable right to broadcast comparable to the right of every individual to speak, write, or publish.”³⁷⁴ Because of this “scarcity” of licenses, and the necessity of government allocation of these limited resources among potential users, courts have applied a deferential standard of review under the First Amendment to the FCC’s regulation of broadcast licensing and have allowed restrictions on broadcast ownership and speech that would be blatantly unconstitutional if applied to other media.³⁷⁵

The NBCO Rule, unlike other FCC ownership rules, does not implicate the scarcity doctrine. The Commission’s only rationale for the newspaper rule today is to promote viewpoint diversity.³⁷⁶ But the newspaper rule has no impact whatsoever on the degree of viewpoint diversity available over the airwaves; it merely identifies a prohibited class of broadcast owners:

reconsideration of *Red Lion* and *Pacifica* . . .”).

³⁷⁴ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969).

³⁷⁵ *National Broadcasting Co. v. FCC*, 319 U.S. 190, 226-27 (1943).

³⁷⁶ 2003 Order, ¶ 442; *Prometheus*, 373 F.3d at 398.

publishers of daily newspapers. The number of separate owners of broadcast stations within a given market is determined solely by the Commission's other ownership rules: the local television or "duopoly" ownership rule, the local radio ownership rule, and any "one-to-a-market" rule. Whether one of these stations is owned by a newspaper does not change the number of different entities that hold the "scarce" number of licenses within that market. The total number of different licensees, and thus the theoretical degree of diversity of viewpoints represented, is the same either way.

The NBCO Rule is designed to promote viewpoint diversity within a broader class of speakers: the class that includes both broadcast stations and newspapers. But *that* class of speakers *is not characterized by scarcity*, at least not in the constitutional sense. Anyone can start a newspaper (in theory anyway), therefore, this broader class of speakers (encompassing both broadcast stations and newspapers) is infinitely expandable.³⁷⁷ The NBCO Rule is predicated on the assumption that broadcast stations and newspapers are equivalent platforms for speech on local issues, but it fails to account for the speaker's unfettered access to the publishing platform for expression. For this reason, the issue of newspaper-broadcast cross-ownership does not arise in a context in which there are more individuals that want to speak than there are platforms for speech.³⁷⁸ For First Amendment purposes, anyone who wishes to gain entry into this broader set of speakers may do so.

b. The NBCO Rule Is Subject to Heightened Scrutiny.

Because the NBCO Rule is a content-based regulation aimed at a class of speakers or speaking platforms not characterized by scarcity, it is subject to strict scrutiny, rather than the

³⁷⁷ See generally *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

³⁷⁸ Cf. *Red Lion*, 395 U.S. at 388.

deferential standard of *Red Lion*.³⁷⁹ Outside the scope of the scarcity doctrine, it is well-settled that the “government may [not] restrict the speech of some elements of our society in order to enhance the relative voice of others.”³⁸⁰ There is no constitutionally permissible rationale for attempting to regulate speech where the opportunity to speak is unlimited. Indeed, a prohibition on combining speakers (broadcast stations and newspapers) where there is an unlimited ability to enter the market of one of the speakers (newspaper publishing) does nothing to enhance viewpoint diversity; it merely arbitrarily restricts the speech rights of those speakers. The NBCO Rule today is thus no more constitutional (or sensible) than a rule aimed at increasing “viewpoint diversity” by prohibiting broadcast stations from operating an Internet site, or prohibiting broadcast owners from making public speeches.

Despite the holding of the Third Circuit, no court has considered this particular First Amendment objection to the NBCO Rule. Although the Supreme Court upheld the NBCO Rule in *FCC v. NCCB*,³⁸¹ it considered and rejected a different set of arguments. Petitioners in that case argued that the Commission had no *statutory* authority to increase diversification of

³⁷⁹ *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). There can be no doubt that the NBCO Rule today is a content-based restriction on speech. Although the Commission originally adopted the NBCO Rule on both diversity and antitrust grounds, *see NCCB*, 436 U.S. at 795-96, the Commission made clear in the *2003 Order* that the *only* basis for the NBCO Rule today is to promote viewpoint diversity. *See 2003 Order*, ¶¶ 354-55. Any conscious attempt to regulate the diversity of viewpoints available in the broader media (encompassing both newspapers and broadcast stations) is necessarily content-based. *See, e.g., Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (restrictions are content-based when not “justified without reference to the content”). Accordingly, well-settled precedent subjects the NBCO Rule to strict scrutiny. *E.g., Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 117 (1991). At a minimum, the NBCO Rule is subject to at least the intermediate scrutiny that the Supreme Court applied to the must-carry rules in *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 (1994). It should be emphasized, however, that the Court upheld the must-carry rules under that standard *only* because they could be supported by a content-neutral, economic/antitrust justification; the Commission has already conceded, however, that there is no longer any such justification for the newspaper rule, *2003 Order*, ¶ 332, and no party appealed that finding to the Third Circuit, *see Prometheus*, 373 F.3d at 398 (“Citizen Petitioners object to the localism and diversity components of the rationale,” but not to the FCC’s conclusion that there is no economic justification for the NBCO Rule).

³⁸⁰ *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (per curiam); *see also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791 n.30 (1978).

³⁸¹ 436 U.S. 775 (1978).

ownership in the broader mass media, because the Commission's jurisdiction is limited to "communications by wire or radio."³⁸² The Supreme Court rejected that statutory argument on the ground that the NBCO Rule fell within the Commission's authority to award licenses in the "public interest." *NCCB*, 436 U.S. at 794-96. With respect to the Constitution, Petitioners argued only that (1) the First Amendment prohibits categorically suppressing the broadcast speech of newspapers to boost the speech of others;³⁸³ (2) the NBCO Rule unconstitutionally conditioned a government benefit (a broadcast license) on giving up a constitutional right (to publish a newspaper);³⁸⁴ and (3) the NBCO Rule violated equal protection by unconstitutionally singling out newspapers for special speech restrictions. In rejecting these arguments, the Court relied heavily on the scarcity doctrine, but no party appears to have argued that the newspaper rule does not implicate that doctrine in the first place.³⁸⁵

Even If the Scarcity Doctrine Applies, It Is No Longer Valid.

If the Commission believes the scarcity doctrine is applicable, then it has an obligation to consider whether the explosion in the number and variety of media outlets since the adoption of the NBCO Rule in 1975 has rendered the doctrine invalid.³⁸⁶ This record is already replete with evidence that the scarcity doctrine is no longer valid; indeed, the Commission's previous order contains abundant findings that necessarily lead to the conclusion that the scarcity doctrine has

³⁸² 47 U.S.C. § 152(a).

³⁸³ *Buckley*, 424 U.S. at 48-49.

³⁸⁴ *See Speiser v. Randall*, 357 U.S. 513 (1958).

³⁸⁵ *See NCCB*, 436 U.S. at 799 ("No one here questions the need for such allocation and regulation [of scarce licenses]"). In rejecting the first argument in particular, the Court relied principally on the statement that "the broadcast media pose unique and special problems not present in the traditional free speech case," *NCCB*, 436 U.S. at 799 (quoting *Buckley*, 424 U.S. at 50 n.55), and that the Commission could act to enhance the volume and quality of coverage of public issues on broadcast stations through regulation, *NCCB*, 436 U.S. at 800 (citing *Red Lion*).

³⁸⁶ *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998) (Commission may well "be thought arbitrary and capricious if it refused to reconsider its rule in light of persuasive evidence that the scarcity rationale is no longer tenable").

been overtaken by events. As demonstrated above, in the last several years, even since the decision of the Third Circuit in *Prometheus*, the Internet revolution and adoption of broadband service have ensured that traditional notions of scarcity no longer can serve as the foundation for the NBCO Rule or any other significant restriction on broadcast speech by newspaper publishers (or newspaper speech by broadcasters).³⁸⁷

The Supreme Court has indicated that it would be appropriate to revisit the spectrum scarcity rationale (and the lesser protection afforded broadcast speech) in any of three circumstances, each of which is present here.³⁸⁸ First, in *Red Lion* itself, the Court stated that “if experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications.”³⁸⁹ As discussed above, the Commission itself already has found that the NBCO Rule “actually works to inhibit [local news and information] programming” because combinations of daily newspapers and broadcast stations enhance the quality and quantity of local coverage.³⁹⁰ The Commission also has found benefits for the diversity of viewpoints arising from newspaper-broadcast combinations: “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints, as measured by third parties.”³⁹¹ The NBCO Rule thus has

³⁸⁷ See *Fox Television Stations*, 129 S. Ct. at 1822 (Thomas, J., concurring (“For all these reasons, I am open to reconsideration of *Red Lion* and *Pacifica* . . .”).

³⁸⁸ The Commission itself indicated in the notice introducing this proceeding that a higher First Amendment standard may be required, *1998 Biennial Regulatory Review*, 15 FCC Rcd. 11058, ¶¶ 115-117 (2000) (suggesting that intermediate scrutiny may be applicable).

³⁸⁹ *Red Lion*, 390 U.S. at 393.

³⁹⁰ See *supra*, at 6-7; *2003 Order* ¶ 342, *aff’d*, *Prometheus*, 373 F.3d 398-99.

³⁹¹ *2003 Order*, ¶ 358.

had exactly the speech-inhibiting effect that the Supreme Court indicated should call into question the merits of subjecting broadcast speech to lesser First Amendment protections.

Second, the Supreme Court long ago stated that, due to the growth of alternative channels of communication, “[s]carcity may soon be a constraint of the past, thus obviating the concerns expressed in *Red Lion*.”³⁹² When the Supreme Court decided *Red Lion* and *NCCB*, the cable television industry was in its infancy and served mainly as a retransmitter of broadcast programming, and UHF television stations and FM radio stations had yet to mature into providers of news and information. The scarcity identified in Supreme Court decisions of the 1970s has disappeared. For example, only a small percentage of households lack access to cable television or direct broadcast satellite service; the Commission found in 2003 that “there are more than 308 satellite-delivered national non-broadcast television networks available for carriage over cable, DBS, and other [video] systems,” with other channels dedicated to local public affairs programming and pay-per-view offerings.³⁹³ Satellite radio, the FM radio service and UHF television service have matured from upstart challengers to AM radio stations and VHF television stations to mature sources of news, information and entertainment.³⁹⁴ And the Internet as a popular medium did not exist when *Red Lion* was decided, but now functions as a principal and pervasive source of information and news, often outpacing its broadcast, cable, and print competitors.³⁹⁵

³⁹² *Columbia Broad. Sys., Inc. v. Democratic National Comm.*, 412 U.S. 94, 158 n.8 (1973) (“*CBS*”) (plurality opinion) (“It has been predicted that it may be possible within 10 years to provide television viewers 400 channels through the advances of cable television.”).

³⁹³ 2003 Order, ¶ 123; *Turner I*, 512 U.S. at 628-29.

³⁹⁴ These new challengers include at least three of Tribune’s television stations in the five cross-ownership markets that were not even on the air in 1975 when the NBCO Rule was adopted.

³⁹⁵ See *supra* at III.C.1.; *Ashcroft v. ACLU*, 535 U.S. 564, 566 (2002) (plurality opinion).

Third, the Supreme Court also acknowledged more than thirty years ago that “[t]he prevailing rationale for broadcast regulation based on spectrum scarcity has come under increasing criticism in recent years,” and the rationale might be reexamined upon “some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required.”³⁹⁶ Both the Commission and Congress have sent that signal. “In the 1985 Fairness Report, the Commission sought to respond to the Supreme Court’s invitation to send it a ‘signal’” and “found that the ‘scarcity rationale,’ which has historically justified content regulation of broadcasting, is no longer valid.”³⁹⁷ Others have noted this result: “the FCC has given the ‘signal’ referred to in *League of Women Voters*, *supra*. The Commission has indicated ... that the problem of spectrum scarcity is rapidly disappearing.”³⁹⁸

Similarly, as discussed above, Congress in the 1996 Telecommunications Act recognized that technological and competitive developments had transformed the nation’s media. Congress there repealed or relaxed numerous ownership restrictions,³⁹⁹ and it directed the FCC to conduct a biennial review “to determine whether any of such [remaining] rules are necessary in the public interest” – commanding the FCC to “repeal or modify any regulation it determines to be no longer in the public interest.”⁴⁰⁰ When the Commission undertook that review in 2003, it concluded that “the local media marketplace has changed dramatically” since the NBCO Rule’s

³⁹⁶ *FCC v. League of Women Voters*, 468 U.S. 364, 376 n.11 (1984).

³⁹⁷ *Meredith Corp. v. FCC*, 809 F.2d 863, 867 (D.C. Cir. 1987) (internal citation omitted); *see Syracuse Peace Council v. WTVH*, 2 FCC Rcd. 5043, ¶ 65 (1987) (subsequent history omitted) (“the scarcity rationale developed in the *Red Lion* decision and successive cases no longer justifies a different standard of First Amendment review for the electronic press”).

³⁹⁸ *Arkansas AFL-CIO*, 11 F.3d at 1442-43 (Arnold, R., C.J., concurring in judgment) (citing *Syracuse Peace Council*, 2 FCC Rcd. 5043 (1987)).

³⁹⁹ 1996 Act §§ 202(a)-(g), 110 Stat. at 110.

⁴⁰⁰ *Id.* § 202(h), 110 Stat. at 110.

adoption in 1975 and documented the explosive growth of cable television, the Internet, and other electronic media.⁴⁰¹ As explained above, those trends have only intensified in the last seven years. Indeed, the Commission correctly concluded that “the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans.”⁴⁰²

While Tribune recognizes that the Third Circuit indicated that it believed the scarcity doctrine was still valid, and applied a deferential First Amendment standard in reviewing the NBCO Rule,⁴⁰³ the Third Circuit’s two-sentence analysis of this issue puts it at odds with many respected lower court jurists of the last 20 years, from across the political spectrum.⁴⁰⁴ Tribune maintains that in this broadband-based Internet media marketplace, over-the-air television broadcast stations do not serve as the same “scarce” commodity as they served at the time of the adoption of the NBCO Rule.⁴⁰⁵

⁴⁰¹ 2003 Order, ¶¶ 86-128.

⁴⁰² *Id.* ¶¶ 365-367.

⁴⁰³ *Prometheus*, 373 F.3d at 402 (“[e]ven if we were not constrained by Supreme Court precedent, we would not accept the . . . contention that the expansion of media outlets has rendered the broadcast spectrum less scarce”).

⁴⁰⁴ See, e.g., *Telecommunications Research & Action Ctr. v. FCC*, 801 F.2d 501, 507-09 (D.C. Cir. 1986) (Bork, J., joined by Scalia and MacKinnon, JJ.); *Action for Children’s Television v. FCC*, 58 F.3d 654, 675 (D.C. Cir. 1995) (Edwards, C.J., dissenting) (“it is no longer responsible for courts to apply a reduced level of First Amendment protection for regulations imposed on broadcast based on the indefensible notion of spectrum scarcity”); *Syracuse Peace Council v. FCC*, 867 F.2d 654, 682-83 (D.C. Cir. 1989) (Starr, J., concurring); *Arkansas AFL-CIO v. FCC*, 11 F.3d 1430, 1443 (8th Cir. 1993) (en banc) (Arnold, R., C.J., concurring in judgment) (“The Supreme Court believed, almost 25 years ago, that broadcasting was sufficiently special to overcome this instinctive feeling of alarm [over threats to speech]. In my opinion, there is a good chance that the legal landscape has changed enough since that time to produce a different result.”); *Time Warner Entertm’t Co. v. FCC*, 105 F.3d 723, 724 n.2 (D.C. Cir. 1997) (per curiam) (Williams, J., joined by Edwards, C.J., Silberman, Ginsburg, and Sentelle, JJ., dissenting from denial of rehearing *en banc*) (“Partly this [criticism] rests on the perception that the ‘scarcity’ rationale never made sense And partly the criticism rests on the growing number of available broadcast channels”).

⁴⁰⁵ For this reason, and the likelihood of Supreme Court review of any continued restrictions on the speech of newspaper publishers, Tribune has presented this issue for Commission review.

The NBCO Rule Violates Equal Protection.

Finally, the NBCO Rule violates the equal protection component of the Fifth Amendment. In *NCCB*, the Supreme Court rejected an equal protection challenge to the NBCO Rule because “the regulations treat newspaper owners in essentially the same fashion as other owners of the major media of mass communications,” which at the time included only newspapers and broadcast stations.⁴⁰⁶ As Tribune demonstrated in the Third Circuit, the NBCO Rule, and any other blanket prohibition on newspaper-broadcast common ownership, no longer can satisfy the *NCCB* test, because it unconstitutionally singles out newspapers among other non-broadcast major media, including cable and satellite programmers and Internet publishers. The Third Circuit rejected this argument in a very brief discussion, in the apparent belief that *NCCB* was dispositive notwithstanding the dramatic change in the status of cable and the Internet. But courts have not been asked that *NCCB* be overruled on this point; a simple and direct *application* of *NCCB* requires repeal of the NBCO Rule. Newspapers are the only non-broadcast media today that are subject to any restrictions on the ownership of broadcast stations,⁴⁰⁷ and restrictions on common ownership of broadcast media that were adopted at the time the NBCO Rule was put into place have been either repealed in their entirety or significantly relaxed.⁴⁰⁸

In singling out newspapers for more restrictive prohibitions, the Commission requires heightened scrutiny under more recent Supreme Court decisions decided after *NCCB*. “[L]aws that single out the press, or certain elements thereof, for special treatment ‘pose a particular danger of abuse by the State;’” this principle applies directly to government restrictions that

⁴⁰⁶ *NCCB*, 436 U.S. at 801.

⁴⁰⁷ *Cf. Fox*, 280 F.3d at 1050-53 (vacating ban on cable-broadcast cross-ownership).

⁴⁰⁸ *See supra* at 14-15.

distinguish between different classes of media outlets.⁴⁰⁹ Even if the restrictions are not content-based, rules that single out a medium for unique restrictions on speech are subject to heightened scrutiny and must be “narrow[ly] tailor[ed]” to and “no greater than is essential to furtherance” of a “substantial[]” government interest.⁴¹⁰ Continued enforcement of any prohibition on newspaper-broadcast cross-ownership that does not adequately recognize today’s media marketplace, including the presence of MVPDs and the Internet, cannot survive review under the equal protection standards of *NCCB* or the heightened review standards of later cases.

VI. THE COMMISSION SHOULD ELIMINATE THE NBCO RULE.

In sum, retention of the NBCO Rule can no longer be sustained under any factual or legal rationale. It must be repealed for at least four reasons.

First, factual changes have rendered the NBCO Rule obsolete. The enhancement in diversity it was adopted to achieve now exists. The media marketplace has become diverse because of technological changes, not because of operation of the NBCO Rule.

Second, these same technological changes have imperiled the business model under which newspapers and broadcast stations operate. The NBCO Rule today affirmatively inhibits the ability of these properties to produce high quality local news and, therefore, harms localism. Repeal is needed to address this anomaly and allow struggling properties to take advantage of cross-ownership synergies. Again, the NBCO Rule has become obsolete.

Third, having found twice before that a complete ban is unnecessary, the Commission would be acting arbitrarily and capriciously to retain the NBCO Rule at this juncture. The APA requires the Commission to take into account the vast changes in the media marketplace that

⁴⁰⁹ *Turner I*, 512 U.S. at 640-41.

⁴¹⁰ *Id.* at 662; see also *Minneapolis Star & Tribune Co. v. Minnesota Comm’r of Revenue*, 460 U.S. 575, 585, 592-93 (1983) (such differential regulation is “presumptively unconstitutional” and “places a heavy burden on the [government] to justify its action”).

have occurred since 1975. Those changes have only intensified since the Commission last acted to find a ban unnecessary. Congress and the Commission have recognized these fundamental changes in numerous instances. Any Commission failure to recognize them as well would fall short of reasoned decision making. These vast changes render the NBCO Rule obsolete.

Finally, retention of the NBCO Rule would be unconstitutional, violative of both the First and Fifth Amendments. The NBCO Rule is content-based and cannot survive heightened scrutiny under the First Amendment. As a separate matter, the rational basis standard of review under which the NBCO Rule survived court scrutiny in 1975, even if once justifiable based on spectrum scarcity, no longer applies now that the scarcity doctrine has been rendered invalid by technological changes. The NBCO Rule also unconstitutionally singles out newspapers among other non-broadcast media, in violation of the Fifth Amendment. Even if the NBCO Rule was once constitutional, factual developments have rendered the NBCO Rule unconstitutional, just as they have rendered it obsolete.

VII. CONCLUSION.

For all the foregoing reasons, the Commission should promptly repeal the NBCO Rule.

Respectfully submitted,

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Date: July 12, 2010

July 12, 2010